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THÈSES CANADIENNES SUR MICROFICHE

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TITLE OF THESIS/*TITRE DE LA THÈSE* THE NATIONAL ENERGY BOARD AND MULTINATIONAL CORPORATIONS: THE POLITICS OF PIPELINES AND NATURAL GAS EXPORTS, 1960-1971

UNIVERSITY/*UNIVERSITÉ* U. OF ALBERTA

DEGREE FOR WHICH THESIS WAS PRESENTED/ *GRADE POUR LEQUEL CETTE THÈSE FUT PRÉSENTÉE* Ph. D.

YEAR THIS DEGREE CONFERRED/*ANNÉE D'OBTENTION DE CE GRADE* 1975

NAME OF SUPERVISOR/*NOM DU DIRECTEUR DE THÈSE* DR. G. R. DAVY

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THE NATIONAL ENERGY BOARD AND MULTINATIONAL CORPORATIONS: THE POLITICS OF PIPE LINES AND NATURAL GAS EXPORTS, 1960-1971

by

John N. McDougall

A THESIS
SUBMITTED TO THE FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

EDMONTON, ALBERTA
SPRING 1975

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UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies for acceptance, a thesis entitled The National Energy Board and Multinational Corporations: The Politics of Pipe Lines and Natural Gas Exports, 1960-1971 submitted by John N. McDougall in partial fulfilment of the requirements for the degree of Doctor of Philosophy.

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ABSTRACT

The economic consequences of the foreign control of Canadian industry have received a great deal of study and discussion, but its political consequences have received, comparatively, very little. For instance, practically nothing has been written about the relationships between foreign controlled corporations and the Canadian authorities who formulate and administer the laws and regulations which govern the conduct of firms operating in this country. How extensively are foreign controlled corporations involved in the decision-making processes concerned with the creation and implementation of such laws and regulations? Under what circumstances are they involved? Does their involvement have any discernible effects on the decisions taken?

This study examines the participation of foreign controlled corporations in the formulation and implementation of Canadian regulations with respect to the export of natural gas and the construction of pipe lines. It views the relationship between the natural gas industry and the Canadian authorities concerned with these matters from the perspective provided by the notion of transnational politics, as defined by J. S. Nye, R. O. Keohane and Karl Kaiser, and that of the penetrated political system, as defined by James Rosenau. One of the concerns of these theorists of international relations is to examine the effect of transnational actors, such as multinational corporations, on the capacity of national governments to control

their societies effectively in the pursuit of national goals. This question, it is argued here, is potentially an important part of the study of foreign controlled corporations in Canada, since it is widely and frequently suggested that the contribution of foreign controlled corporations to Canadian society can be enhanced through the appropriate government controls.

Thus, this study is concerned with the degree to which Canadian authorities have succeeded in regulating some aspects of the Canadian natural gas industry, which contains a high proportion of foreign controlled firms, for the maximum benefit to Canadians. It is argued that a lack of success is apparent in some respects and that this failure can, on the basis of this study, be attributed tentatively to the degree of discretion allowed the National Energy Board, in combination with the large extent to which foreign controlled corporations have been involved in its deliberations.

PREFACE

The origins of this project are located in two separate developments which occurred during the late Sixties. The first of these developments was the growing intensity of concern, both academically and politically, with the foreign control of Canadian industry and its possible detrimental impact on the Canadian economy. Three types of solution to the claimed costs of foreign control were frequently suggested: Canadian ownership through nationalization; Canadian ownership through private Canadian investment; and government regulation and supervision of the performance of foreign controlled corporations aimed at reducing the undesirable practices of firms which remained under foreign control. The Liberal Government of the day appeared to prefer the third of these alternatives, to the extent that it was prepared to act at all.

A second development in these years was a growing concern among some students of international politics and foreign policy with political relationships which, while they occurred between or across different countries, did not fit conventional notions of international politics of the traditional, government-to-government variety. One type of such relations used as an example was the interaction between an international private organization, such as an international corporation or trade union, and the government of a particular country. One of the questions raised in this context was the effect of such foreign based organizations on the politics and government of the country involved, that is, their impact on the domestic and foreign policies of the government.

In the midst of these two developments, I began to wonder what the political consequences for Canada might be of the presence in this country of a very large number of foreign controlled corporations. Did the penetration of Canadian society by foreign based, world-wide organizations have any effect on the policies adopted by Canadian governments or on the success with which their policies were carried out? After an unsuccessful attempt at designing a study which would provide a general answer to this question, it was proposed that a single case of the relationships between the Canadian government and industry be examined, paying particular attention to the foreign controlled firms in the industry under study. The petroleum industry seemed an obvious choice, as one containing the highest proportion of foreign ownership; and federal regulation of trade and transportation of petroleum seemed a clear focus for the investigation of policy.

The structure of the present study reflects these origins and this initial proposal. Chapter I reviews some of the literature in the field of international political integration and elaborates, in particular, its concern with relations between transnational actors and national governments and the effect of transnational actors on the policies and efficacy of national governments. Chapter II proceeds to review several studies of some aspects of foreign controlled corporations in Canada and points out that these studies raise, implicitly or explicitly, a question concerning the impact of multinational corporations on the policies and efficacy of the

Canadian government. From these two chapters is drawn a set of questions concerning the interaction between foreign controlled corporations and Canadian authorities and the impact of these relations on decisions taken by Canadian authorities.

The remaining chapters approach these questions with respect to the Canadian natural gas industry and the Canadian authorities who have formulated and implemented Canadian policies with respect to the export of natural gas and the construction of pipe lines. Chapter III accordingly examines the proceedings and recommendations of the Royal Commission on Energy with respect to these matters. Chapter IV reviews all the decisions which the National Energy Board has made with respect to gas exports and, in addition, several important decisions with respect to pipe lines.* Chapter V reviews the record of what the Canadian government and members of parliament have had to say over the years concerning the National Energy Board and the decisions it has made. Chapter VI analyzes the material presented and draws some conclusions concerning the politics of foreign control.

In effect, then, this study presents a review and analysis of the public record on the questions of Canadian policies toward the export of natural gas and the construction of pipe lines, spanning the period from 1957 to 1971. While much has occurred in the area of Canadian oil and gas policies since 1971, the temporal limits of this study constitute what might be called a 'natural' review period; for it reviews the history of gas export and pipe line decisions from, in effect, the Pipe Lines Debate to the National Energy Board's most recent decision on the matters under review here. Moreover, as I hope the following review will make clear, the period from 1958-1971 is distinct from the post-1971 period on several qualitative grounds as well. The most important of these differences is the inadequacy of natural gas supplies in Western Canada in relation to immediate Canadian and export demands.

This study, therefore, presents only one very narrow but, I believe, greatly important facet of a very large and shaded political region--the politics of oil, gas and transmission companies. The facet it presents is the public one--interviews have been used only in a corroborative manner. It is hoped, however, that the job which has been done here with the public record is not only useful and interesting in itself but is done well enough to provide a solid footing for more sophisticated inquiries in the future.

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*This study does not review a decision taken by the Board in 1971, in which it found that no exportable surplus of gas existed. As a consequence, no further deliberations on the applications was undertaken. The 1971 decision was, in effect, a re-run of the August 1970 decision, reviewed at length in Chapter IV. It brought nothing new to light and is notable, from the standpoint of this study, primarily for the fact that the Board received for the first time interventions from Pollution Probe at the University of Toronto and the Ontario Waffle Group in the New Democratic Party, neither of which are typical of the intervenors the Board has traditionally encountered. See National Energy Board, Reasons for Decision in the Màtter of the Applications Under the National Energy Board Act of Alberta and Southern Gas Co. Limited et alia, Ottawa, November, 1971 (Mimeo).

ACKNOWLEDGEMENTS

I would like to express my gratitude to a number of individuals and institutions who have contributed invaluable services and support to the completion of this work. Foremost among these is Professor Grant Davy, who has laboured hard through every stage of the project and has made countless very helpful suggestions with respect to a wide range of problems. Peter Meekison read the entire first draft and suggested several major improvements. Bruce Wilkinson has offered a great deal of wisdom and knowledge throughout and, in particular, proposed several changes to Chapter II. I can only hope that the finished product in some way vindicates the time and interest these men have invested in it.

Numerous others have given assistance along the way with respect to some part of this work; I. A. Litvak, C. J. Maule, Denis Stairs, Don Munton and Frank Roseman deserve special mention. The responsibility for the faults which remain is entirely my own.

Finally, the Canada Council and the Centre for Foreign Policy Studies, Dalhousie University, provided generous financial support.

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CHAPTER I

MULTINATIONAL CORPORATIONS AND THE THEORY OF TRANSNATIONAL POLITICS

Compared to the number of economic studies of the subject, the number of political studies of the foreign controlled corporation in Canada is very small. Several of the political studies which have been done are gathered together in a volume devoted to an examination of Canadian-American relations in the light of the theory of international political integration.[1] A similar approach is used in the present study, which examines the involvement of foreign controlled companies in the formulation and implementation of Canadian regulations regarding the export of natural gas and the construction of pipe lines. In this case, the relationship between the Canadian authorities and the multinational companies involved is regarded as an instance of 'transnational politics', which several analysts view as one of the forms of international political integration.[2]

This chapter introduces and discusses the theory of transnational politics and related theories concerning the political consequences of the growth of international society, by which is meant the changes in national and international politics associated with increases in social interaction, economic interdependence, and intergovernmental decision-making among many countries. The aim here is not to set out a theory which subsequent empirical chapters of the work are intended to verify. Rather, the aim is to establish the arguable significance of the terms within which the subject of the study is addressed and the questions it attempts to answer.

The literature which constitutes the field of international political integration contains two apparently contradictory notions of the political consequences of the economic and social integration of separate states. The field is divided between opposing concepts of political integration. One part views political integration according to a reasonably explicit model of state-building, that is, a model of the evolution of new and higher authorities--super-states--which comprise the member states of the unions and which gradually acquire the attributes formerly held by the states making them up--permanent institutions of justice, taxation, defence, law enforcement, and representation which achieve legitimacy in the eyes of their inhabitants. The other part holds the view that what has been conceived and described in terms of state-building is much more accurately conceived in terms of the disintegration of the states, that is, in terms of a devolution of the authority of several states of traditional form to numerous, disaggragated centers of decision-making which are functionally differentiated, which encompass representatives of public and private agents of diverse nationality, and which resolve conflicts and allocate goods without reference to any higher or more comprehensive authority among them.

It will be argued here that the theory of 'transnational relations', which has been defined as "contacts, coalitions, and interactions across state boundaries that are not controlled by the central foreign policy organs of governments," contains a notion of international political integration which falls between the view of it held by the theorists of political unification, on the one hand, and those of functional integration, on the other hand.[3] The same will be said of several systems theorists who speak in terms of the 'penetration' of the state and 'linkages' between national and international political systems. Both of these approaches attempt to conceptualize the coexistence of the state as conventionally described and the new actors and forms of interaction associated with economic and social integration.

It would appear that all of these theories and approaches are based on observations of the same international conditions, which might generally be called 'advanced industrial society' or 'mass-consumption society'. They are all studies of different aspects of the transformations in the character and functioning of the state--and, hence, in the character of both national and international politics--brought about by the growth of society beyond the limits of the state. They stem from the observation that the great systems of production, transportation, exchange, distribution, investment, and communication on which the welfare of its inhabitants depends are overrunning and obliterating the state's territorial and legal boundaries. Consequently, each of them might reasonably be expected to throw some light on the nature of the relationship between multinational corporations and national governments.[4] The remainder of this chapter is devoted to a discussion of these three approaches and, in conclusion, a discussion of their possible application to the study of foreign controlled corporations in Canada.

Political Unification

Some grave doubts have been expressed as to whether the political consequences of economic and social integration are properly analyzed in terms of political unification and nation-building.[5] The present purpose, however, is merely to question the universality of the theory and empirical generalizations which have been generated in a decade or more of the study of economic unions and the political consequences of economic integration.

While the independent variables commonly employed in these works would seem to be capable of broader application--they are essentially measures of economic and social integration or interaction--the dependent variables are commonly framed in terms of political unification, that is, in terms of the establishment of common governmental institutions, the behaviour of those institutions, and the policies and attitudes of leaders and publics in the member states toward the union and its central institutions. Even when the dependent variables and hypotheses are not necessarily limited in their applicability by this type of definition, the hypotheses are almost exclusively tested against the experience of the formation of unions or attempts at the formation of unions.[6]

The problem with this emphasis on common institutions and their behaviour and on national attitudes and policies concerning unification is that it does not permit the examination of the political integration in cases where common political and administrative institutions are non-existent or have little authority and limited scope, where the possibility of union is explicitly rejected officially and is without national support, and where, correspondingly, the primary political adjustments to economic and social integration occur predominantly within individual states. Cases which stand closer to these conditions than to those defining political unification are the relationship Canada has with the United States and the relationship some underdeveloped countries have with highly industrialized countries. It is interesting, in reference particularly to the second of these cases, that the literature on political unification focuses almost exclusively on the attempts at economic union in the underdeveloped world and largely ignores a broad range of political adjustments within individual underdeveloped countries brought about by their interdependence with more advanced economies (which could, of course, include attempts to unite economically with other underdeveloped countries in their regions).[7]

Generally, studies of political unification have been concerned to trace the relationship of the 'regional economic' to the 'regional political'. They have been much less concerned with the relationship of the 'inter-regional economic' to the 'regional political' or even the 'national political'. For example, the integrating effects of multinational business has been examined in the context of the study of political unification in Europe, but the businesses so examined are largely European corporations. The effects of non-European corporations operating throughout Europe on political integration there are less actively considered.[8]

Functional Integration

Closer to a general theory of the politics of integration is that of functional integration. Here, the fundamental notion of the political consequences of economic and social integration is cryptically stated. Politics will disappear.

> Supranationality, not federation, confederation or intergovernmental organization, seems to be the appropriate regional counterpart to the national state which no longer feels capable of realizing welfare aims within its own narrow borders, which has made its peace with the fact of interdependence in an industrial and egalitarian age. . . . The advent of supranationality symbolizes the victory of economics over politics.[9]

Both national and international politics succumb to the triumph of bureaucracy and the growth of economic and social interdependence, that is, the development of a new international society:

> The image which characterizes the nation-state as a warm and self-contained community and juxtaposes it to the colder and more calculating world of nation-states labelled 'international society' is oversimplified and misleading, at least in the North Atlantic area. The internal as well as the external network of relations of nations constitute a species of society; both increasingly function on the basis of calculated interest and adjustment among interests, on the part of voluntary groups as well as of governments.[10]

The state, by this image, and with it international politics of the traditional mode, dissolves into an amalgam of public authorities and private interest-groups from several different countries engaged in a process of "variable-sum" bargaining.

It is significant that David Mitrany, one of the original proponents of this view, drew explicitly on the national politics of the United States as an instance of what he saw developing in the international sphere. Deeply concerned that the world should rest on a peaceful footing in the aftermath of World War II, Mitrany advocated a universal association which "would select and organize certain activities for the purpose of integrating with regard to them the interests and actions of all."[11] To illustrate the principle by which the association should organize these activities, he pointed to a definition of 'region' in use by a planning board in the United States Government:

> a region is the locus of a problem, its limits the limit of that problem, with a focal centre for its administration. On that definition America has some one hundred and twelve different regional systems--one for the Federal Reserve Bank, one for the Agricultural Adjustment Administration, and so on--for different federal purposes; some coincide with state boundaries, others do not, and their administrative centres are in different parts and cities.[12]

An application of this approach in the sphere of international politics "would help the growth of such positive and constructive work, of common habits and interests, making frontier lines meaningless by overlaying them with a natural growth of common activities and common administrative agencies."[13]

The importance of Mitrany's use of the United States for the purpose of illustrating potential developments in international politics is that he ignored the United States as an example of the federation of formerly distinct and autonomous units, for this is not the sort of integration he is concerned to promote. On the contrary, he emphasized the increasing functional differentiation of tasks within the country as well as the performance of those tasks and the resolution of problems by an array of widely dispersed centres of administration and decision-making which, when taken together, tend to obfuscate traditional divisions of authority between the federal and state governments. Functional integration on the international plane would, by this model, amount to the international extension of interest-group politics and technocracy, the rule of the bureaucrat and the expert.

Because the central concepts of technocracy and pluralism represent conditions which are general to advanced industrial societies, the theory of functional integration as it has developed out of the thought of David Mitrany would appear to be more generally applicable than that of political unification, as outlined above. Wherever governments seek to resolve conflicts among themselves or to solve common problems by turning them over to agencies consisting of administrators, experts, and interest groups from several states, it is an instance of functional integration. There need be no unitary structure to the whole set of agencies constituted in this way. There need be no hierarchical arrangement of the set of such agencies. The number of agencies in the set may grow or diminish over time. Each body in the set may contain representatives from a different group of states. The different bodies may be constituted under the auspices of an international organization, an international treaty, a variety of multilateral and bi-lateral agreements, or simply an informal system of negotiation, cooperation and consultation, and there need not be any prior or eventual attempt to coordinate one such body with any other. All these characteristics can vary according to the task at hand and in response to the requirements of efficient task performance; they need not be ordered according to a strategy for the unification of states or the super-imposition of rationality on the whole of their relations.[14] As a recent inquiry into function and international organization has expressed it,

> the re-ordering of political space and restructuring of political authority across states is actor specific and issue-specific, hence assymetrical and discontinuous. New loci are

> neither territorial nor institutional, but behavioral, and within them authority is shared, pooled, redistributed, or withheld, depending upon [several considerations]. . . .[15]

Functional integration, then, is not a form of political unification or even necessarily a factor contributing to political unification. It is better described as an amalgamation of the bureaucratic-interest-group nexus of several states.[16] As such, it is a derivation or extension of the bureaucratization of politics common to advanced industrial states. It is a product of the pursuit of the most efficient means to human welfare under conditions of international interdependence. Under the joint conditions of, first, human welfare as the ultimate justification of politics and of the state and, second, the superior efficiency of all interdependent means over all independent means to human welfare, national and international politics in their traditional form would vanish. This was Mitrany's wish and his assumption. But neither of these conditions is with us yet, assuming they ever can be.[17]

Regardless of whether the present limits of this process persist, they appear to have prevented the completion of integration for the present. Consequently, we are in the presence of, on the one hand, states which continue to wield at least some of their traditional powers and prerogatives and, on the other hand, the international integration of a host of public and private functions. Emerging from this situation is a set of questions concerning the relationship in any particular country between the internationally integrated sectors of its society and its government.

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Penetration and Transitional Politics

From the perspective of the individual state, the processes of international society amount to the presence of individuals, organizations, corporations and other agents within its borders and under its jurisdiction whose conduct is conditioned, if not actually determined, by the fact that they function within systems of interaction and communication located largely outside the state. Such external organizations or systems may be either public or private. Examples of the governmental type might be military advisors from another country working to train the army of a country, or a task force from the Food and Agricultural Organization working in a country to improve its irrigation system. Examples of the non-governmental type might be the subsidiary of an international firm or the national chapter of some international political or social organizations such as Amnesty International, Oxfam, and the Roman Catholic Church.[18]

The agents of outside organizations in any given country act, for good or ill, as the conveyers of goods, methods, and ideas which would otherwise not be found in that country. Moreover, some of them may act under the fairly close supervision of the outside organization. Consequently, studies of the relationships between the external and internal parts of cross-national systems have used such terms as the 'penetrability', 'permeability', or 'accessibility' of a given state to outside intervention. More recently, a new framework for the study of the impact of such cross-national systems on both the national and foreign policies of states has been developed around central concepts such as 'transnational relations' and 'transnational politics'. What these works have in common is the attempt to describe, analyze, and understand the on-going relations between national government and politics, on the one hand, and international social and economic systems, on the other.

James Rosenau, much of whose work has been dedicated to exploring the convergence of national and international politics under contemporary conditions, once pointed to the need

> to identify a new type of political system that will account for phenomena which not even a less rigid use of the national-international distinction renders comprehensible. Such a system might be called a penetrated political system and its essential characteristics might be defined in the following way: A penetrated political system is one in which non-members of a national society participate directly and authoritatively, through actions taken jointly with the societies members, in either the allocation of its values or the mobilization of support on behalf of its goals.[19]

This need for new concepts arises from a condition wherein "the boundaries of political systems are defined by activities and processes, not by legalities."[20] In other words, some account must be taken of the development of political interactions which occur neither exclusively *within* states nor exclusively *between* states, but occur as it were *across* states. Thus, another observer writing at about the same time complained that "most political scientists who use systems theory nowadays identify the political system with the state."[21] In preference to this, Spiro suggests that

> a political system can exist whenever people are concerned about common problems and are engaged in cooperation and conflict in efforts to solve these problems. . . . Individuals or groupings--'units'--are involved in politics with one another when they are trying to solve their problems together, because each recognizes that it cannot solve its particular problems alone--even though each may be pursuing different goals.[22]

The extent of political systems of this kind is neither defined or limited, necessarily, by the borders of individual states. "In addition to conventionally defined 'national' political systems and the 'cosmically' defined global system, there exists also at any moment a series of complex, intricate, overlapping networks of political systems that are brought into being as a result of efforts, by units, to solve their problems together."[23] Thus, in the language of systems theory, the problem of the relationship between functionally integrated sectors of a country and the government of that country can be restated as the problem of the relationship between new cross-national systems and the national political system. As the first quotation from Rosenau suggests, the relationship is likely to be embodied in actors who simultaneously interact within national and cross-national systems of interaction. A framework for the study of this type of interaction and of the actors engaged in it has been advanced by the theorists of 'transnational relations' and, in particular, the work of Karl Kaiser.

The theorists of transnational politics are concerned with politically salient interactions which are neither strictly national (interactions between public and/or private actors within the same state) nor strictly international in the traditional sense (diplomacy between the government officials of more than one state). They call these interactions "transnational," and define them as "the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of government or an intergovernmental organization."[24] That they are concerned with the same type of relationships as Rosenau and Spiro, is suggested by their definition of "transnational relations". Such relations, as related earlier, are made up of the "contacts, coalitions, and interactions across state boundaries that are not controlled by the central foreign policy organs of governments."[25] Finally, these theorists recognize that transnational interactions can occur in the form of the internal communications and exchanges which take place within "transnational organizations", that is, organizations which conduct operations in more than one country, such as international enterprises, professional associations, unions, and service organizations. They allow that transnational relations can consist of the relations between any one of the national components of such organizations and its respective national government. As Keohane and Nye put it,

> the activities of IBM in Brazil or Unilever in the United States are within the context of transnational relations even though some of these activities may occur entirely within Brazil, on the one hand, or the United States, on the other hand. It would seem extremely artificial, for example, to exclude an arrangement made between Standard Oil Company of New Jersey and the French government from the arena of transnational relations merely because all the negotiations for the agreement have taken place in Paris.[26]

It is precisely this sort of relationship between the national components of transnational organizations and their host governments which Karl Kaiser's work examines.

Kaiser argues that the political consequences of international economic and social interactions should be examined on two dimensions: the horizontal dimension consisting of various forms of transnational interaction which collectively make up what he calls "transnational society"; and the vertical dimension consisting of various forms of relations between the governments of individual states and the various sectors of their particular societies which participate in transnational interactions.

Kaiser defines "transnational society" as "a system of interaction in a specific issue area between societal actors in different national systems."[27] Any such system of interaction cannot be understood geographically, according to Kaiser, and must be understood functionally, "i.e., circumscribed by the issue areas which are the subject of interaction."[28] Thus, Kaiser conceives his horizontal dimension.

He conceives his vertical dimension as the various ways in which public authorities intervene, either individually or with those from other countries, in transnational processes. His collective term for all these forms of intervention is "multinational politics," which he defined as "processes in which public bureaucracies allocate values *either jointly* in decision-making frameworks that are intermeshed across national frontiers *or separately* as a result of transnational interaction at the societal level."[29] Examples of the various forms of multinational politics range from "the interaction between the national subsidiaries of a multinational business corporation and one of several host governments" to "the joint decision-making between governments (as between the United Kingdom and France on the Concorde) or the multinational intermeshing of decision-making which characterizes integration."[30]

The importance of Kaiser's work is the recognition that transnational processes and transnational actors are implicated in a variety of forms of government and administration. The relationship between public authorities and transnational systems of interaction, the stuff of multinational politics, may variously occur as the interaction between a public agency and a transnational actor within a single state, as negotiations and consultation between the public agencies of two or more states over matters arising out of some transnational process in which they share an interest, or as the administrative acts of permanent supranational institutions. There is, further, the recognition of variability, from issue to issue, with respect to whether and to what extent public authorities in a given state become involved with particular transnational actors and processes: vertical interaction "grows in intensity with the degree of democratization and/or the extent to which permanent intervention of governmental institutions in the social and economic life of society becomes a constituent element of the political system."[31]

Transnational Politics: The Canadian Case

Taken together, the several theories and intellectual frameworks described above have important similarities; they are also complementary on some points, as weaknesses in some are capable of reinforcement by strengths in others. All of them study social and economic interaction among states and the changes in politics and government, including international and intergovernmental relations, associated with new higher levels of such interaction.

As perspectives on the politics of North American integration, all of these theories would appear to have something to contribute, at least heuristically. The transnational relations framework seems to address the question most directly. Theories of political unification, especially those whose dependent variables are defined in terms of explicitly supranational institutions or of the development of national policies and attitudes in support of political unification, do not appear on that basis to be directly applicable to the Canadian-American case because of the paucity of such institutions and the lack of efforts toward their creation.[32]

In the case of the theory of functional integration, again its direct application to Canada and the United States is restricted by the paucity of formally constituted institutions for combined decision-making and joint administration. However, the importance of pluralism and technocracy within the theory suggests that some attention might be usefully paid to informal patterns of relations between government officials in the Canadian bureaucracy and experts and officials from foreign bureaucracies or representatives of foreign corporations or their Canadian subsidiaries. There is additionally the possibility that foreign business interests enter Canadian politics to a considerable extent by virtue of their participation in, and occasionally their numerical dominance of, Canadian trade associations. In other words, it is conceivable that what is accomplished in Europe by the multinational institutions of the EEC working in relation to national and transnational interest groups is, in North America, accomplished by strictly Canadian bureaucratic institutions working in relation to transnational actors or national interest groups consisting of large numbers of transnational actors. This type of relationship is best approached by using the intellectual framework presented by the theory of transnational relations.

The theories of both political unification and functional integration have tended to see the political repercussions of economic and social integration primarily in terms of the creation of common institutions among a group of states, the policies and decision-making processes of those common institutions, and the impact of inter-governmental (or "supranational") decisions on the governments and societies of the member states. The Canadian-American case would seem to require an approach which puts less emphasis on formal institutions and decision-making processes at the international level, but allows for some exploration of the political repercussions of the comparatively very high level of economic and social interaction between the two countries. This the transnational politics approach seems well suited to do; for it emphasizes, although it does not deal exclusively with, the effect of international actors and processes on national institutions. Several students of transnational politics, including Kaiser, have suggested, for example, that transnational actors such as multinational corporations can reduce the effectiveness with which some national governments pursue their economic and social goals or alter the nature of national goals.

Whether this is so and, if it is so, how it comes about are questions which the remainder of this study is intended to answer, or to help in answering, with specific reference to Canada. It examines the relationship in Canada between the producers and transmitters of natural gas, a large proportion of whom are foreign controlled, and the authorities responsible for the formulation and implementation of Canadian regulations concerning the export and transmission of that gas. In other words, this study examines an instance of the control by Canadian authorities of a highly penetrated sector of Canadian society. However, before that task is taken up, the following chapter provides a review of what some economists have had to say about foreign controlled corporations in Canada generally and, in that context, again raises the question of the effective application of Canadian laws and regulations to foreign controlled firms. It is further suggested there that this question is inevitably raised, implicitly at least, by anyone who feels that Canada does not receive the full potential benefit from the performance of foreign controlled corporations in this country and recommends some form of regulation as a means of improving that situation.

NOTES TO CHAPTER I

[1] See W. Andrew Axline, et. al. (eds.), Continental Community? Independence and Integration in North America (Toronto: McClelland and Stewart, 1974).

[2] One of the leading theorists in the area of transnational politics, Joseph Nye, Jr., has also published very widely in the field of international regional integration. Charles Pentland feels that theories of functional integration, in particular, will gain a great deal from the literature on the political impact of transnational relations. See his "Political Integration: A Multidimensional Perspective," in Axline, et. al., op. cit., Chapter 2, p. 51.

[3] J. S. Nye, Jr. and R. O. Keohane, "Transnational Relations and World Politics: An Introduction," in R. O. Keohane and J. S. Nye, Jr. (eds.), International Organization, XXIX, 3 (Summer, 1971), p. 331.

[4] The multinational corporation is often and variously cited as a major manifestation and/or principal instrument of international integration. See, for examples, J. S. Nye, Jr., "Multinational Enterprises and Prospects for Regional and Global Integration," The Annals of the American Academy of Political and Social Science, 403 (September, 1972), pp. 116-126; and, in the same volume, Howard V. Perlmutter, "The Multinational Firm and the Future," pp. 139-152.

[5] For an excellent critique of theories of international integration which are bound to an image of the state, see J. G. Ruggie, "The Structure of International Organization: Contingency, Complexity, and the Post-Modern Form," Peace Research Society, Papers, 18, The London Conference, 1971. A central point in Ruggie's argument is that the hierarchical structure of authority implied by the image of the political unification of states is simply not to be found: "If there is a 'direction' to the pattern of organization, or the principles of structuring, it does not seem to be a movement toward either 'higher' or more inclusive levels of authority, as these terms are usually understood. Not organization above states, but an enormously complex and rather fundamental reordering of political space and re-structuring of public authority across states appears to be the pattern of the future" (p. 87). For different reasons, Hoffman and Aron would agree that no movement toward super-states can be discerned, even in Europe, and is unlikely to occur, mainly because the states involved are not prepared to abandon their ultimate status as powers unto themselves. See, for example, Stanley Hoffman, "Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe," International Regionalism: Readings, ed. J. S. Nye, Jr. (Boston: Little, Brown and Co., 1968) and Raymond Aron, Peace and War: A Theory of International Relations, trans. Richard Howard and Annette Baker Fox (New York: Frederick A. Praeger, 1966), pp. 456-463.

[6] Ernst Haas has undertaken a review of the study of regional integration, the "dominant desire" of whose students is "to explain the tendency toward the voluntary creation of larger political units each of which self-consciously eschews the use of force in the relations between the participating units and groups." See Ernst B. Haas, "The Study of Regional Integration: Reflections on the Joy and Anguish of Pretheorizing," Regional Integration: Theory and Research, ed. L. N. Lindberg and S. A. Scheingold (Cambridge, Mass.: Harvard University Press, 1971), p. 4. The theoretical preoccupation with unification, as well as the empirical emphasis on economic unions, is evident in Haas's summary of the empirical generalizations which "the study of regional integration seems to have established" (pp. 9-17). However, note also Haas's observation that there is "disagreement on what constitutes the dependent variable" among major theories of regional integration and his claim that progress could be expected "if we could clarify the matter of what we propose to explain and/or predict" (p. 26). At a few points in his review, Haas indicates a concern to shift the study of regional integration from a preoccupation with the state-building model (pp. 6 and 30-31). Cf. Ruggie, op. cit., Fn. 7.

[7] Here I am thinking, in particular, of the political transformations brought about in underdeveloped countries as a consequence of the bifurcation of their economies into a modern sector which is integrated within the global economy dominated by the industrialized countries, on the one hand, and a traditional or depressed sector, on the other hand. See, for example, Stephen Hymer, "The Multinational Corporation and Uneven Development," Economics and World Order, ed. J. Bhagwati (New York: World Law Fund, 1970). The idea, of course, that regional economic union has value as means to counter the forces of integration with an extra-regional economic power is not unfamiliar to Western Europeans, many of whom see the EEC as a counterforce to integration with the United States.

[8] It would be very interesting in this connection to compare the impact of American controlled corporations on the unity of Canada with their impact on the unity of the EEC. For a very interesting discussion of the Canadian case, see Garth Stevenson, "Continental Integration and Canadian Unity," in Axline et. al., op. cit., Chapter 8.

[9] Ernst B. Haas, "Technocracy, Pluralism, and the New Europe," International Regionalism: Readings, ed. J. S. Nye, Jr. (Boston: Little, Brown and Co., 1968), p. 159.

[10] Ibid., p. 161 (emphasis in the original).

[11] David Mitrany, A Working Peace System: An Argument for the Functional Development of International Organization, The London Institute of International Affairs (London: Oxford University Press, 1943), pp. 18-19.

[12] Ibid., p. 19n.

[13] Ibid., p. 27.

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[14] Mitrany, *op. cit.*, p. 35.

[15] Ruggie, *op. cit.*, p. 88.

[16] Thus, one observer features what he calls 'bureaucratic interpenetration' as "the intermingling of national and international bureaucrats in various working groups and committees in the policy-making context of the EEC." He also points out that national pressure groups of member countries approach the EEC bureaucracy through their relations with national bureaucracies, which are in turn one of the major props of the community. See Lawrence Scheinman, "Some Preliminary Notes on Bureaucratic Relationships in the European Economic Community," *International Organization*, XX (1966), pp. 751 and 759. The national administrators, of course, also strive to retain their position as intermediaries between national interest groups and community policy-makers, as described in Werner Feld, "National Economic Interest Groups and Policy Formation in the EEC," *Political Science Quarterly*, LXXXI (September, 1966), pp. 392-411. See also, Dusan Sidjanski, "Pressure Groups and the European Economic Community," *Government and Opposition*, II (1966-67), pp. 397-416.

[17] For several different arguments concerning the conditions limiting the potential of international integration, see Hoffman, *op. cit.*; John G. Ruggie, "Collective Goods and Future International Collaboration," *American Political Science Review*, LXVI, 3 (September, 1972), pp. 874-893; Horst Mendershausen, "Transnational Society vs. State Sovereignty, *KYKLOS*, XXII, 2 (1969), pp. 251-273.

[18] Several diverse examples of such transnational organizations are discussed with reference to their implications for individual states in contributions to Keohane and Nye, Jr. (eds.), *op. cit*.

[19] J. N. Rosenau, "Pre-Theories and Theories of Foreign Policy," *Approaches to Comparative and International Politics*, ed. R. B. Farrell (Evanston: Northwestern University Press, 1966), p. 65.

[20] *Ibid.*, p. 64.

[21] H. J. Spiro, *World Politics: the Global System* (Homewood, Illinois: Dorsey Press, 1966), p. 44.

[22] *Ibid.*, p. 50.

[23] *Ibid.*, p. 51.

[24] Keohane and Nye, Jr., "Transnational Relations in World Politics: An Introduction," *op. cit.*, p. 332.

[25] *Ibid.*, p. 331.

[26] *Ibid.*, p. 335.

[27] Karl Kaiser, "Transnational Politics: Toward a Theory of Multinational Politics," *International Organization*, XXX, 4 (Autumn, 1971), p. 802.

[28] *Ibid*., p. 803.

[29] *Ibid*., p. 796 (emphasis added).

[30] *Ibid*., pp. 796-797.

[31] *Ibid*., pp. 811-812.

[32] This point receives attention from both Pentland and Stevenson in their respective contributions to Axline *et al*., *op. cit*. Stevenson suggests that Washington and foreign controlled corporations in Canada prefer not to see the development of formal institutional relations between Canada and the United States, as this would tend to centralize Canadian decision-making in areas where they are able at present to play the provinces off against one another. See Stevenson, *op. cit*., pp. 212 and 197 and Pentland, *op. cit*., p. 50.

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CHAPTER II

THE CHARACTER AND CONSEQUENCES OF FOREIGN CONTROLLED CORPORATIONS IN CANADA

In the previous chapter, several theories were discussed with reference to the political consequences of economic and social integration. One of these theories, that of transnational relations, was singled out as giving special emphasis to transnational interactions, processes, and actors and their impact on the government and politics of particular states. This analysis concluded with a discussion of several aspects of the relationship between the subsidiary of a multinational corporation in a given country and the government of that country, such as the subsidiary's involvement in the political processes of the country, the degree to which the government of the country intervenes in the economy or that sector of the economy in which the subsidiary operates, and the capacity of the subsidiary to avert or resist laws and regulations of the host country.

The present chapter examines an instance of this kind of relationship, namely that between foreign controlled corporations and the government of Canada, from a different perspective. It begins with a very brief review of some of the most important points which have emerged out of (mainly economic) studies of the performance of foreign controlled corporations in Canada and of the costs and benefits to Canadians which these studies have attributed to such firms. It is then observed on the basis of this review that the authors of several such studies have concluded, rightly or wrongly, that at the very least the net benefits to Canada derived from the presence of foreign controlled corporations in the country are not as high as they could be and that various government policies ought to be employed to improve this situation.

The chapter includes no assessment of the accuracy of these studies or the advisability of their recommendations. It does, however, state that such studies beg the question of the involvement of the foreign controlled corporations themselves in the very processes of policy formulation and administration which might be established to control their conduct. The point is therefore raised at the close of the chapter that, while there is a paucity of direct evidence of the participation of these firms in Canadian politics and government, such participation seems highly likely on the basis of what is known generally about the relationship between interest groups and government. Nevertheless, it is argued, finally, that more detailed and direct investigations of attempts by the government to control sectors of the Canadian economy which contain large numbers of foreign controlled corporations would appear to be in order and that one such investigation occupies the remainder of the present study.

Foreign Direct Investment and Corporate Control

There have been numerous statements of possible conflicts between the multinational corporation and the state. Many, such as the following by Stephen Hymer, express a view of multinational corporations and states as alternative and perhaps mutually exclusive instruments for the control and efficient utilization of economic resources:

> The large corporation illustrates how real and important are the advantages of large-scale planning, but it does not tell us how best to achieve wider domains of conscious coordination. Broadly speaking, there are two main directions in which we can proceed. Multinational corporations integrate one industry over many countries. The alternative is to integrate many industries over one country and to develop noncorporate linkages between countries for the free flow of goods and, more important, information. The advantage of the second direction is that it keeps the economy within the boundary of the polity and society. It thus creates less tension and creates the possibility of bringing economic power under control by removing the wastes of oligopolistic anarchy.[1]

This theme should be familiar to anyone who has followed at all closely the academic and political dialogues in Canada on the topic of foreign controlled corporations.

Canadian politicians and academics have been concerned to know the effects of foreign control on the efficiency with which the country's resources are employed and on the success with which national economic goals can be achieved. Among the questions generally raised, and the studies undertaken to answer them, it is possible to distinguish three types. There are, first, questions having to do with the net economic benefits which Canada does and could derive from foreign direct investment. The aim of this type of inquiry is to establish what behaviour on the part of foreign controlled corporations results in net costs to Canada and, more often than not, to determine what action on the part of government can be expected to reduce the occurrence of such behaviour or the costlines of its consequences.[2] Second, there are questions having to do with the susceptibility of foreign controlled firms to the control and influence of the Canadian government. The aim of this type of inquiry is to establish what characteristics of the foreign controlled corporation reduce its responsiveness to acts of authority and how these characteristics can and should be altered.[3] Third, there are questions concerning the capacity of foreign controlled corporations to affect the character of the laws and the administrative and regulatory acts of Canadian authorities. The aim of this type of inquiry has generally been to assess the probability that laws and policies inimical to the interests of international enterprises will be undertaken by governments in Canada.[4] All of these questions arise as a consequence of the most significant characteristic of (most) foreign direct investment, the parent-subsidiary relationship.

There appears to be a general consensus among observers of foreign direct investment, including most observers of foreign controlled corporations in Canada, that the centrally significant feature of such investments is the "continuing control" exercised by the foreign investor over the use of the assets acquired through his investments.[5] In practice, moreover, the foreign investor who exercises this continuing control is a corporation. Foreign direct investments, therefore, generally (though not necessarily) result in a parent-subsidiary relationship consisting of the control over the operations of a corporation in one (the host) country by a corporation in another (the home) country.

The consequences of the control over the operations of Canadian corporations by their foreign parent corporations is a topic of some debate among Canadian observers. Its significance is discounted by some, who therefore view foreign direct investment in precisely the same way as they are given to view foreign capital in general.[6] Its significance is insisted on by others, who regard the inflow of capital into Canada as only one, relatively inconsequential facet of foreign direct investment.[7] In dispute, therefore, is the claim that, in fact, the control of a Canadian subsidiary by a foreign corporation results in observable differences in characteristics or behaviour of the subsidiary as compared with a (real or hypothetical) independent Canadian corporation in the same industry and of comparable size. This dispute is logically prior to the question whether the differences attributable to foreign control are evaluated as beneficial or detrimental to the Canadian economy, by some measure of the economic good. These two very different exercises--measuring by comparison the differences between Canadian and foreign controlled corporations and evaluating the differences observed with reference to some specified standard--are not always readily distinguishable in Canadian work on the subject. Nevertheless, the distinction will be maintained in this review of some of the studies of foreign direct investment in Canada. It may be helpful, before that task is begun, to discuss some general characteristics of foreign direct investment in this country.

Foreign capital invested in Canada has grown from a book value of two hundred million dollars in 1867 to a book value of over thirty-four billion dollars in 1967. Over this same period, notable changes have taken place with respect to the national origin of the preponderant share of all foreign investment in Canada and with respect to the relative shares of direct and portfolio investment. British capital has declined as a proportion of all foreign capital in Canada from over ninety per cent in 1867 to only ten per cent in 1967; while American capital has increased from seven and one-half per cent to eighty-one per cent. Over the same peri[illegible]irect investment has increased from less than eight per cent of all foreign investment to over fifty-nine per cent. American investment represented over half of all foreign investment by 1926. Direct investment represented half of all foreign investment in 1952. The history of foreign investment in Canada, therefore, exhibits a decided swing toward direct investment and growth in the relative importance of investments from the United States.[8]

These figures make it clear that, while foreign investment has always been a factor in the Canadian economy, direct investment as the dominant form of foreign investment is comparatively new. This development has taken place, moreover, during a period of time in which Canadian reliance on foreign capital has generally decreased. To quote the Gray Report:

> Prior to World War I, external capital constituted a higher proportion of capital employed in the economy than at any time since. In relative terms, therefore, this was the time when foreign investment made its greatest contribution to the economy.[9]

Thus, it has been argued, foreign direct investment in Canada has grown most rapidly while Canada has not been particularly short of capital. This situation illustrates and is accounted for by the fact that foreign direct investment is often more a case of capital formation than of capital movement, that is, the assets controlled by foreign investors can grow much more rapidly than the inflow of foreign funds.[10] Thus,

> over the period 1957 to 1964 U.S. direct investment in manufacturing, mining and petroleum secured 73 per cent of their

> funds from retained earnings and depreciation reserves, a further 12 per cent from Canadian banks and other intermediaries and only 15 per cent in the form of new funds from the United States. Furthermore, throughout the period payout of dividends, interest, royalties and management fees exceeded the inflow of new capital.[11]

Of the $43.9 billion used to finance the expansion of foreign controlled corporations in Canada from 1946 to 1967, $9.7 billion, or about twenty-two per cent, was derived from foreign sources, and Canadian sources (retained earnings, capital cost allowances and Canadian capital markets) provided the remainder.[12] More recent figures are even more striking in this respect. In 1968, United States subsidiaries in Canada obtained only five per cent of the funds they absorbed in the form of new inflow from the United States, while over ninety-three per cent was generated in Canada.[13]

Given that the source of the preponderant share of foreign direct investments has been Canada, it is interesting to note the ends to which these funds have been directed. To consider again the years 1946 to 1967:

> About half the increase in United States direct investment during this period was for the development of Canada's natural resources. A large portion of the investment in resource exploitation reflected the needs of United States investors for raw materials for their processing and manufacturing plants in the United States. These captive export markets were a particularly important factor in a number of developments, as the very heavy capital costs involved were apparently very difficult to justify without assured markets for the output, . . . and sufficiently large markets were not then available in Canada.[14]

To a considerable extent, then, foreign direct investments have represented the employment of Canadian capital for the expansion of foreign controlled enterprises which produced commodities Canada could not use.

The point to be drawn from this very brief history is that the greatest significance of foreign direct investment should be attached neither to the inflow of capital (for it need not be such) nor to the effects of the investment as such (for these are not necessarily affected by the locus of ownership of the capital employed) but rather to the eventual performance of the enterprise established, purchased, or expanded by means of the investment. Furthermore, the latter aspect of foreign direct investment would retain its significance even if no new foreign funds ever flowed into Canada again; for the possibility would remain that the foreign control of the firms already established through foreign direct investment affected the performance of those firms, and that some of these practices were detrimental to the Canadian economy. As H. J. G. Aitken noted some time ago:

> Direct investments typically involve the extension into Canada of organizations based in other countries; these organizations establish themselves in Canada for purposes of their own and bring with them their own business practices, their own methods of production, their own skilled personnel, and very often their own market outlets. If all Canadian borrowings from other countries were to cease tomorrow, these direct investment organizations would continue to exist and function. Many of them, indeed, would continue to expand, financing their growth from retained earnings. And the corporate linkages which integrate them--and the sectors of the Canadian economy that they control--with organizations in other countries that still survive.[15]

It remains to be seen what business practices can be attributed to the foreign control of Canadian firms, and what forms of behaviour are peculiar to foreign controlled firms.

The Performance of Foreign Controlled Corporations

It has already been observed that foreign direct investments in Canada commonly entail a set of relations between the Canadian subsidiary and its foreign parent. It is useful to view this set of relations as the endowment of the Canadian firm with access to a set of resources possessed by the parent firm. This set or package of benefits consists of, among other things, sources of capital, markets, supplies, managerial techniques and skills, technology, research capability, marketing skills and resources, rights and patents, and intangibles such as reputation. The use of these resources by the Canadian subsidiary, however, is contingent on its place within the operations and strategy of the international enterprise which is their source.[16] This gives rise to the possibility of divergence between the behaviour of foreign and Canadian controlled corporations who are otherwise similar.

However, not all the objections to foreign controlled corporations are raised on the basis that they behave differently from comparable Canadian corporations; and not all practices attributed to foreign controlled corporations can be tested empirically on the basis of direct comparison with Canadian firms. First, objections have been raised to characteristics of foreign controlled corporations which it does not share with nationally controlled firms, such as their capacity to avoid the incidence of taxation through the arbitrary pricing of intra-firm transfers and their liability to the laws and guidelines of their home government. Second, objections have been raised to some practices of some foreign controlled firms with which no Canadian firm is of comparable size, such as large petroleum companies.

Comparable Characteristics

There have been a number of studies of the relationship between Canadian subsidiaries and their foreign parents and of the effect of this relationship on the performance of the former. As one of the more recent studies has summarized this work,

> concern has been expressed that American subsidiaries do not perform adequately in some or all of the following: undertaking research and development; exporting to third countries; purchasing supplies in Canada; employing Canadians in management positions; supporting Canadian charities and universities; implementing fully integrated manufacturing processes; using fair market prices for intrafirm transactions; and making equity participation available to Canadians. With regard to most of these activities, researchers have found that in fact American affiliates perform as well, if not better, than comparable Canadian firms but worse than comparable firms in the U.S.[17]

Some of these points of comparison between Canadian and foreign controlled firms are elaborated below, to see if this rather positive conclusion is warranted.

(1) Exports: Foreign control can be expected to bring both advantages and disadvantages to the host economy with respect to export performance. The advantages include an assured foreign market for its products, in the form of either the parent firm itself, other subsidiaries of the parent, or a fixed share of the parent's international and home markets. They also include access to research, marketing organization, and other benefits which may reduce the Canadian subsidiary's cost of doing business and enhance its competitiveness. The possible disadvantages include restrictions on the export activity of

the subsidiary on a geographic or product basis, and the failure of the subsidiary to develop its own export sales capability.

On the basis of the available evidence, it would seem that foreign control is either a neutral or a positive factor in the export performance of Canadian subsidiaries. In the aggregate, no significant relationship exists between exports as a percentage of domestic production and the extent of non-resident ownership of industry; and a comparison of similar foreign and Canadian controlled firms failed to establish any statistically significant difference in export performance.[18] Nevertheless, the Gray Report provides evidence that foreign controlled manufacturing subsidiaries operate under some kind of restriction on exports.[19] "While the impact of these restrictions is impossible to quantify, it is likely that they have, in a significant number of cases, reduced Canadian competitiveness by limiting the achievement of economies of scale, the scope for managerial decision-making, the possibilities for R&D and product innovation and additional tax revenues."[20]

Other aspects of the export performance of foreign controlled corporations deserve mention. It is clear from the study of Canadian trade that inter-affiliate trade is large and increasing. This fact, especially when it is found in conjunction with the export of raw materials and semi-processed goods, suggests that when it comes to evaluating the net benefits to Canada of subsidiary exports, considerations such as the unit prices they obtain may be more important than the absolute figures for their total export revenues or volume of export sales.[21] "The question arises whether these trade patterns, based in part on administrative decisions by foreign parent companies pursuing their own corporate interests, will respond to Canadian policy objectives and to the underlying economic circumstances."[22]

(2) Imports: It is clear from available studies that foreign control is a significant factor in import performance: "The main determinants of highly processed manufacturing imports appear to be domestic and foreign tariffs and the degree of foreign ownership of Canadian industry. . . ."[23] A comparison of Canadian and foreign controlled firms has indicated that foreign controlled firms import a higher proportion of their total purchases of materials, parts, equipment and services than do resident owned firms.[24] A significant relationship also exists between the degree of foreign ownership in each of several categories of industry and the proportion which exports make up of the total output of that industry.[25] Moreover, there is a high and increasing propensity of foreign controlled corporations in Canada to import, to import from affiliates, and to import from the country of the parent company; and there are further indications that this propensity is likely to be perpetuated.[26] While such practices may be, and probably are, efficient and rational from the point of view of the parent firm, and even that of the subsidiary, they may also result in costs to the Canadian economy, such as the diminished growth of supply industries, barriers to the entry of Canadian suppliers, and a limitation on the range of managerial decisions located in Canadian subsidiaries.

(3) Technology: It is evident from the available research that foreign controlled firms are gradually losing a superiority they once

held with respect to R&D performance. In 1959, a higher proportion of non-resident owned firms fostered research effort than Canadian owned firms, where a firm's research effort was defined as research undertaken within the firm plus its purchases elsewhere: "A larger proportion of the non-resident owned firms had a total research effort in excess of 0.5 per cent of sales, 39 per cent of them falling into this category compared to 27 per cent of the resident owned firms."[27] With respect to research done within the Canadian company, as opposed to the total including purchases abroad, foreign controlled corporations also compared favourably in 1959. Forty-six per cent of both Canadian and foreign controlled firms conducted no research within the Canadian company. "For those with research-development, a somewhat larger proportion of the non-resident owned firms spent in excess of 0.5 per cent of sales on research-development, namely 32 per cent as opposed to 24 per cent of resident owned firms."[28]

More recently, however, Canadian controlled firms have improved both their relative and absolute expenditures on R&D. In the words of the Gray Report:

> Actual expenditures of foreign controlled firms seem to have peaked and they actually fell in 1970, while their relative share has also declined. In 1970, Canadian controlled firms spent more than 45 per cent of the total, compared to 39 per cent in 1967. In view of the fact that around 90 per cent of total R&D expenditure is in manufacturing industries, that Canadian controlled firms constitute less than 45 per cent of the manufacturing sector and that they are concentrated in the less research intensive industries, it would appear that the R&D effort by Canadian controlled firms has recently compared more favourably with the foreign controlled sector than previously. . . .[29]

Foreign controlled corporations also import technology at a rate which probably exceeds that of Canadian controlled corporations.

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While precise figures for the value of this imported technology are difficult to determine, it is significant that the predominant portion of these imports arrive as transfers within the international firm.[30] This raises the possibility that technology imported into Canada in large quantities arrives in a form and at a price dictated by the objectives and interests of the parent firm. Consequences of this could be an industrial structure based on foreign corporate or foreign national priorities, a failure on the part of Canadian industries to realize the full export potential of imported or indigenous innovation, and a failure on the part of Canadian industries to import at lowest cost from all available sources of technology.

(4) Management: It has been observed on the basis of 1962 data that "the proportion of Canadian residents and of Canadian citizens who are directors and presidents of Canadian firms increases as the proportion of Canadian ownership in a firm increases."[31] It is uncertain, of course, precisely to what degree the residency and citizenship of the directors and managers of a firm affects its performance and behaviour. However, Safarian does point out that directors associated with the significant owners (in effect, the parent firms) of foreign controlled firms constitute a higher proportion of the boards of such firms than the directors associated with the significant owners of Canadian controlled firms do of Canadian controlled firms; while 'outside directors' form a smaller proportion of the boards of larger non-resident owned than of larger resident owned firms.[32]

> These differences reflect the fact that the immediate ownership of the typical non-resident owned firm is less diffuse than that of the resident owned firm, in the sense that most

> of the former are wholly owned by a single foreign firm (whatever the ultimate stockholder interests of the parent firm may be) while most of the resident owned firms are immediately owned by the ultimate stockholder interests. If one can make the assumption that the parent representatives on the subsidiaries' boards are more likely to be management interests closely identified with the operations of the international firm rather than the ultimate owners of the parent firm, then almost 80 per cent of the persons on the larger subsidiaries boards represent management interests, whether of the subsidiary or its affiliate, as against only about one third for the larger resident owned firms.[33]

Finally, it is evident that a smaller proportion of foreign controlled firms have active boards than Canadian firms, that is, proportionately more foreign controlled firms have boards which meet "only to satisfy legal requirements and [play] no role in the overall policies of the firm." Moreover, "the active boards of the larger resident owned firms met more frequently on average than those of non-resident owned firms, due mainly to a number of the latter which described themselves as 'active' while meeting once or twice a year."[34]

Taken together, the various aspects of corporate behaviour discussed here do not exhaust the possible points of comparison between Canadian and foreign controlled corporations, but they do represent those which have received attention from several different observers and on which some systematically derived data are available. To summarize these data and the studies reporting them, it appears that foreign control is a factor influencing the purchasing policy of firms and their propensity to import; the composition, level of activity, and role of their boards and managing committees; and possibly their propensity to engage in research and development and to exploit available R&D to its full potential in world markets. There are, in addition, indications that while the export performance of foreign controlled corporations compares favourably with that of Canadian controlled firms, it may nevertheless be less strong than it could be, owing to the export restrictions which many Canadian subsidiaries report are placed on them by their parents.

Peculiar Characteristics of Foreign Controlled Corporations

It has already been pointed out that the most significant characteristic of foreign direct investment, from the viewpoint of most of the economic literature, is the continuing control of the subsidiary firm by the foreign parent. The significance of foreign control is that the operation of the Canadian subsidiary of an international enterprise is consciously aimed at the efficient realization of the goals of a corporate entity outside the jurisdiction of Canadian authorities and the Canadian economic environment. As a consequence, not even the objective of profitability on the part of the Canadian subsidiary *per se* can be reliably expected, for the rationale of the international enterprise as a whole may lead it to maximize profits in other national jurisdictions, to set the prices of the products of the Canadian operation at unprofitable levels, or to restrict the growth of the subsidiary in favour of firms operating in other national jurisdictions.[35] Thus, the global rationale of the foreign parent enterprise can dictate conduct on the part of the Canadian firm which would not be tolerated by the stockholders of the Canadian operation, if there were any in sufficient numbers and concentration to make themselves felt. Others have expressed a further concern, to be discussed below, that access to certain factors, such as managerial talent and technology, through the medium of the multinational firm can result in the permanent dependency of the Canadian economy on such firms for these factors.

The potential conflict between the corporate interests of the parent and the subsidiary is clearly understood by the international firm, and is one important reason for its reluctance to float equity internationally. In the words of one American corporation with wholly-owned Canadian mining firms, a Canadian mine is

> an integrated part of our entire production scheme. If we had minority stockholders in the mine itself with our parent company's stockholders therefore owning only part of the mine, we would have two conflicting interests within the company regarding a single integrated process. This fact has always caused us to reject the idea of selling a minority interest.[36]

Or, as an executive director of Dupont of Canada has put it, "often it is impractical to sell equity shares at anything like the per unit value to the parent company because of initial loss periods or because the chief impact of the subsidiary is on the incremental earnings of the parent, rather than any direct profit in the subsidiary."[37] This position is often accompanied by a recommendation that investors in the host country purchase equity in the foreign parent corporation.

These points concerning the sale of equity in the subsidiary firm underscore the fact that there is something at stake in the question of the ownership of the firm, that what is at stake is whether the firm can be counted on to serve the interests of the foreign parent firm, and that serving the interests of the foreign parent may entail behaviour on the part of the subsidiary which is rational from the standpoint of the foreign parent but may be irrational from the viewpoint of the subsidiary per se or of its host government.

Essentially, then, what appears to be at issue is the point which underlies the quotation from Stephen Hymer at the opening of this chapter: Is the internal rationalization of the international firm in the interest of host countries? In a country such as Canada, where foreign controlled corporations dominate numerous industries, and where there is no valid comparison to be made between the foreign controlled and Canadian firms in these industries, this question would seem to deserve primary attention.

Several prominent studies of the foreign controlled corporation in Canada stress, not the relative efficiency of Canadian and foreign controlled firms, but the absolute impact of foreign control on the Canadian economy. The potential danger most commonly pointed out in these studies is that the international rationalization of industry represents for Canada a possible long-term dependence upon outsiders for technology, managerial and entrepreneurial talent, and markets for finished products.[38] Pressed to their limits, as Hymer illustrates, these arguments are ultimately based on a concept of economic rationality in opposition to that which underlies the international rationalization of firms and industries; for these arguments rest on a premise regarding the value of national self-sufficiency or at least of the maintenance of some degree of indigenous capacity in several specified areas of business and industrial endeavour.[39]

In addition to the relationship between access to foreign sources of some factors of production through the channel of the international firm, on the one hand, and the depressed indigenous development of these factors, on the other, there are also concerns with respect to the relationship between the price and the value of factors traded internationally between affiliated firms. In the extractive industries in Canada, doubts have been expressed whether Canadians receive a reasonable return on their resources on the basis of the prices charged by the Canadian subsidiaries to their foreign parents and whether a higher proportion of the value of the end product might not be added in Canada through higher grade processing.[40] In the manufacturing industries, doubts have been expressed whether Canada receives full value for what Canadian subsidiaries pay their foreign parents to acquire R&D, licences and patents, managerial resources and other components, and whether Canadian subsidiaries come to fully exploit these acquired factors through aggressive searches for markets.[41]

Finally, in addition to these economic grounds, criticism of foreign controlled corporations has been current for some time on the basis of political standards of evaluation, namely the problem of extraterritorial application of foreign laws and the problem of the diminished effectiveness of Canadian laws. The point is often made and substantiated with several examples (more often than not, the same examples) that foreign controlled corporations are on occasion obedient to the laws of the home country (which, in most of the examples, is the United States).[42] It is also complained, somewhat less frequently, that because of their links with a global enterprise, foreign controlled corporations are less susceptible to either the penalties or the inducements employed by government in the pursuit of national economic goals.[43]

Concern over extraterritoriality arises out of a recognition that the Canadian and foreign governments can be in conflict over the conduct of foreign owned businesses in Canada. The United States government, for example, fully realizing the facts of international business, regards American parent companies wholly culpable under United States law for acts performed outside the territory of the United States by foreign subsidiaries of the American companies. Because of this, the American parent companies instruct their subsidiaries to act so as not to violate United States laws or guidelines, in particular, those relating to trade with Communist countries, antitrust and, more recently, foreign investments. This has evidently resulted in Canadian subsidiaries failing to take business decisions which might have appeared to be in their interests or in the Canadian interest, such as failing to fill or to seek out orders from China and Cuba.

While the most widely cited examples, noted earlier, may establish that foreign controlled corporations have occasionally failed to act in accordance with the spirit of Canadian policy toward certain countries, it has rarely, if ever, been established that foreign controlled corporations thereby violate the letter of any Canadian law. In fact, in cases where obedience by an American-controlled subsidiary in a country to United States law would oblige that subsidiary to violate the laws of its host country, the precedents suggest that the American courts will not insist on compliance with United States law;

i.e., they will not uphold prosecution of the American parent corporation in the United States for reason of the conduct of its foreign subsidiary.[44] Thus, the conduct of foreign controlled corporations in these instances is more accurately regarded as a failure to act in Canada's best economic interests than as violation of Canadian legal sovereignty. There is a legal difference between the Canadian government encouraging trade with Communist countries and establishing laws which compel trade with such countries.

A more interesting case, and probably more substantial in economic terms, is that of antitrust laws in the United States which can work to prevent a merger between the Canadian subsidiaries of American parent companies which is opposed by American authorities. Given the stress in Canada on the problems of the 'miniature replica effect' and the 'truncation' of Canadian subsidiares under foreign control, the extraterritorial application of United States antitrust legislation could have serious economic consequences, since it would tend to prevent the combination of foreign controlled firms in Canada into enterprises of efficient size. Again, however, it is important to keep in mind that no Canadian law, so far as I am aware, has ever required two or more foreign controlled corporations in Canada to combine and later failed because of the defiance of the foreign controlled firms.[45] American antitrust legislation may therefore inhibit the voluntary merger of Canadian subsidiaries, but there is no evidence that it results in the impossibility of such mergers in defiance of a Canadian law to bring them about. The consequence of these American laws, therefore, appears more in the form of gaps in Canadian policies and laws than in the form of a challenge to Canadian sovereignty.

The difficulty with regard to the conduct of foreign controlled corporations as constituting or as signifying an erosion of Canadian sovereignty--whether their conduct is determined by a foreign parent acting in response to a foreign law or in response to its own global business strategy and corporate policies--is that the Canadian government, like many other non-socialist governments, intervenes in the conduct of the enterprises within its borders only rarely and, normally, indirectly. When specific changes in corporate behaviour are desired in the service of national goals, such changes are rarely required by specific laws to that effect, and are more often elicited by means of inducements of one form or another and by means of 'climatic' changes in the Canadian economic 'environment', such as tax incentives, tariff changes, procurement policies and other measures.

The question of whether or not Canadian law can be successfully enforced against a foreign controlled corporation which has been found guilty of violating the law is very different from the question of whether or not it tends to comply with broad statements of government policy or respond as desired by the Canadian economic incentives. Before we can conclude that foreign controlled corporations are able successfully to defy Canadian law and avoid Canadian sanctions, we must be able to observe instances of legislation which unambiguously and absolutely proscribe or prescribe particular actions on the part of individual firms; but this type of control of business is not common in Canada.

Nevertheless, the effect of foreign control on the capacity of the Canadian government to implement its policies for the successful realization of national goals does not, in any case, have only to do with the extraterritorial application of the laws of foreign governments. Viewed from the Canadian side, foreign control of Canadian business may reduce the capacity of the Canadian government to affect the performance of Canadian subsidiaries simply by virtue of the subsidiaries' obedience to the business dictates of their parent corporations on matters that have nothing to do with laws in the home country.

Foreign Direct Investment and National Economic Control

It would seem from the above review of several studies of the foreign controlled corporation in Canada that there are some costs directly attributable to their presence in the economy. This is not to say whether the costs outweigh the benefits or the potential benefits which may also be attributable to foreign controlled corporations, but it is to say that the net (positive or negative) benefit to Canada of foreign direct investment could be improved if some practices of foreign controlled corporations were eliminated and if some of their characteristics were altered. It therefore seems meaningful to ask how the Canadian government might reduce the costs to Canada of foreign direct investment through changes in Canadian laws, regulations and policies.

Logically, all such changes must be of either one of two types:[46] they must be either measures which sever the control links between the Canadian subsidiary and its foreign parent or, alternatively, measures designed to modify the conduct or the consequences of the conduct of corporations which remain within the control of foreign parent corporations. To sever the control links as a solution to the costs of foreign control is, of course, to eliminate access to the benefits of foreign control as well. To leave the control links intact, while dealing selectively with only the offending practices of foreign controlled corporations, is to enter into a continuing requirement to survey, evaluate, and to regulate the conduct of such firms. Interestingly enough, three major policy positions which have appeared in Canadian politics on the question of foreign control illustrate these different options. The (erstwhile) Waffle and the socialist wing of the NDP argue for a severing of the links through public ownership of selected foreign controlled corporations. The Committee for an Independent Canada also supports a severing of the control links through the private purchase by Canadians of controlling interests in selected foreign controlled corporations. The Gray Report, a study conducted by a Liberal member of Parliament and published under the authority of the Canadian government, argues time and again in favour of rectifying the unwelcome aspects of foreign control through the continuous surveillance of foreign controlled corporations, direct regulation and legislation to modify some practices and characteristics for foreign controlled corporations, and general revisions in economic policy to mitigate the harmful consequences of the conduct of foreign controlled corporations--none of which would terminate the continuing relationship between Canadian subsidiaries and their foreign parents.[47]

At least two questions arise immediately out of the approach to foreign controlled corporations advocated by the Gray Report. One has to do with the likelihood that a government in Canada would ever bring in legislation designed to deal effectively with particular offending practices of such companies. The other has to do with the prospects for the successful implementation of such legislation if it ever were passed. Both questions are rooted in the understanding that foreign controlled corporations are not merely passive economic organizations in this country, but active political agents at both the political and administrative levels.

While direct evidence of the relations between the Canadian government and foreign controlled corporations is slight, it can be said analytically that there are two ways in which the companies could protect themselves against government actions compelling them to perform in a manner which they considered undesirable. They could, first, attempt to modify the form of the statutes and regulations put into force by the government or prevent them from being enacted at all; and, second, they could seek to influence the implementation of statutes or regulations through relations with the departments or agencies charged with the responsibility of enforcing them. (The two, of course, are not mutually exclusive; indeed, the second is a logical back-stop against the failure of the first.) The arresting or modification of legislation could presumably be brought about through some combination of relations at an elite level, political party financing, and appeals to cabinet ministers and higher-level administrators either individually or collectively through Canadian trade associations. The softening of the implementation of adverse legislation could presumably be brought about through the use of the cooperative working relationships which would appear to be widespread between administrative and regulatory agencies and associations representing the interest groups within their area of responsibility.[48]

The extent to which foreign controlled corporations do, in fact, engage in any of these activities is nowhere systematically documented, to the best of the author's knowledge. Porter has made some rather ambiguous references to the participation of directors of foreign controlled businesses in the Canadian economic elite and, hence, in their relations with the Canadian political elite.[49] There is a very small amount of documentation of the contributions of foreign controlled corporations as such to Canadian political parties.[50] This author has conducted a crudely designed study to establish the approximate extent of the participation of foreign controlled corporations in the leadership of several advisory councils and trade associations in the resource sector.[51] Finally, the authors of the Gray Report make several references to the political activity of foreign controlled corporations as elaborated below.

The Gray Report does not take up the question of relationships between the Canadian political elite and the executives of foreign controlled firms. With respect to party finance, it states only that "no evidence is available that would suggest that the behaviour of the individual foreign controlled firm differs in any way significant from that of the domestically controlled firm in election campaigns."[52] It also points out that these firms "obviously do not cloak their intervention in electoral politics by having trade associations act in their behalf."[53]

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The Gray Report then proceeds to make a series of points which lead in the direction which will be taken by this study of the politics of foreign controlled corporations. It points to

> the part played by foreign controlled firms in shaping and influencing the advice which various levels of government receive from the business community. Foreign controlled firms play active roles in such trade associations as the Canadian Manufacturer's Association and the Canadian Chamber of Commerce. Indeed, they probably provide a substantial source of financial support for the CMA. Foreign controlled firms are also active in various formal and informal government advisory committees, such as the National Advisory Committee on Petroleum and the Business Advisory Committee reporting to the Minister of Industry, Trade and Commerce.[54]

After pointing out, further, that foreign controlled corporations also influence the views and actions of associated Canadian firms, the Report goes on to suggest that

> Western political philosophy accepts the premise that individuals and groups have a legitimate right to try to influence public policy and to secure redress from grievances by lawful collective action. Indeed, much public policy emerges out of the clash of conflicting group interests.[55]

The significance of this in the Canadian context is deduced directly:

> Many of the largest and most concentrated Canadian industries are dominated by foreign controlled firms and inevitably the policies and attitudes of these firms reflect those of their parent companies. Some of the political pressures which are brought to bear on the Canadian government come from within the Canadian political system through the medium of subsidiary firms and can reflect the interests of foreign businesses.[56]

The authors could easily, with these words, be engaged in a discussion of transnational politics and of Canada as an instance of a penetrated political system.

The main difficulty with the line of argument pursued by the Gray Report on this subject is the lack of evidence for their position.

It provides only these few isolated examples of the situation which is described in general terms: the opposition of the leading Canadian rubber tire and chemical producers to rationalization, which "reflects very strongly the fact that they are not controlled within Canada;" the skeptical view of a vertically integrated petroleum firm under Canadian control taken by some members of the petroleum industry, which seems similarly attributable in part to the fact that most of the firms are not Canadian controlled; and, finally, "the very strong representations made in respect to proposals for changes in taxation of mining firms which reflected the international scope of the industry and the fact that most of the firms in it were foreign controlled multinational enterprises."[57]

The remainder of the present study is devoted to the task of providing more systematic and substantial evidence for the line of argument pursued by the Gray Report. It will examine, from a similar standpoint, the involvement of foreign controlled corporations in the formulation and implementation of regulations affecting the interests of the natural gas industry. The emphasis will be on the involvement of these companies with the decisions and recommendations made by advisory and regulatory agencies, rather than with political parties and the political elite. The reason for this choice of focus is, in part, the practical problem of obtaining reliable information concerning activities at the higher level. Another important reason, however, is that it seems reasonable to expect, as the authors of the Gray Report purport to know, that significant policies in this area have emerged "out of the clash of conflicting group interests" represented within administrative, regulatory and advisory agencies of the government.

This expectation does seem fairly reasonable, when based on the studies noted earlier of interest groups in Canada and in the light of some general observations of contemporary politics and government which have been made by Doern and Aucoin with respect to Canada and by Theodore Lowi in the United States. Thus, Doern and Aucoin argue that there are, in effect, two structures, one "that operates primarily in and around the cabinet in the conversion of new or fundamental political policy issues into outputs," and another "that operates primarily in and around the bureaucracy in the continuing conversion of manifest or latent support for existing programs into outputs."[58] They then describe the second structure as one which

> determines by far the greatest proportion of 'values' and 'outputs' authoritatively allocated, on an annual basis, by the political system. Secondly, it is grossly misleading to think that this pattern of allocation is merely the 'administration' of past policies. . . . It is misleading because allocations produced in this way often are reallocated in directions unintended by the politician initially. These unintended outputs are caused partly because they are allocated by a complex bureaucracy which, by virtue of its complexity, is subject to the displacement of goals and partly because the politician himself delegates such allocative roles to bodies within the bureaucracy or to so-called independent bodies, the Canadian Radio and Television Commission, for example. . . . They are often 'rationally' contrived; that is, related to a different set of goals or assumptions later inserted by policy actors, which are just as effectively 'policies' as were the original general statements made by politicians.[59]

A possible relationship between this 'delegation of allocative roles' and the potential power of private interest groups to shape public policies is further suggested by Theodore Lowi in his excellent, critical analysis of modern government in the United States and of what he calls "interest-group liberalism." He argues that the lack of precision and clarity in legislation, the devolution of policy-making power on administrative and regulatory agencies, and the appropriation of public authority by private groups by virtue of their intimate association with these public agencies, are not merely coincidental. In his terms, the prototype of the modern statute is one which creates a new board or commission to control some segment or function of society, with instructions which say, in effect, "Here is a problem, deal with it." Few, if any, standards of performance accompany the delegation of powers; the objectives to be achieved by means of the powers transferred are rarely given clear or precise definition. Thus, the ensuing administrative process does not merely implement policy but determines what the content of policy shall be. However, "the more undefined and imprecise the policy determination reached by the legislature in passing a statute, the more certainly will the activities of an enforcing commission have to reflect a modus operandi with the regulated groups." One of the principal reasons for this is the requirement, under the assumptions of 'interest-group liberalism' and 'participatory democracy' to maintain some degree of representation and accountability in the context of modern government. "The further down the line one delegates power, the further into the administrative process one is forced to provide representation."[60]

It remains to be seen how the authority of the Canadian government over the export of natural gas and the construction of pipe lines has been exercised, to what extent and for what ends foreign controlled corporations have been involved in that exercise of authority, and what the results of this involvement have been with respect to both the decisions of Canadian authorities and the structure and performance of the Canadian natural gas industry.

NOTES TO CHAPTER II

[1] Stephen Hymer, "The Efficiency (Contradictions) of Multinational Corporations," *American Economic Review*, LX, 2 (May, 1970), p. 448.

[2] See, for example, John Lindeman and Donald Armstrong, *Policies and Practices of United States Subsidiaries in Canada* (Montreal: Canadian-American Committee, 1961); A. E. Safarian, *Foreign Ownership of Canadian Industry* (Toronto: McGraw-Hill, 1966); B. W. Wilkinson *Canada's International Trade: An Analysis of Recent Trends and Patterns* (Montreal: Canadian Trade Committee, 1968); The Government of Canada, *Foreign Direct Investment in Canada* (Ottawa: Information Canada, 1972), Chapters 6-14 (This study is commonly referred to as 'The Gray Report'. Hereafter, it will be cited as *Foreign Direct Investment*.); Pierre L. Bourgault, *Innovation and the Structure of Canadian Industry*, Background Study for the Science Council of Canada, No. 23 (Ottawa: Information Canada, 1972).

[3] See, for example, W. L. Gordon, *A Choice for Canada: Independence or Colonial Status* (Toronto: McClelland and Stewart, 1966); Task Force on the Structure of Canadian Industry, *Foreign Ownership and the Structure of Canadian Industry*, Report (Ottawa: Queen's Printer, 1968); *Foreign Direct Investment*, Chapters 15-16; I. A. Litvak, C. J. Maule and R. D. Robinson, *Dual Loyalty: Canadian-United States Business Arrangements* (Toronto: McGraw-Hill, 1971).

[4] See, for example, Kari Levitt, *Silent Surrender: The Multinational Corporation in Canada* (Toronto: Macmillan of Canada, 1970); *Foreign Direct Investment*, Chapters 18-19.

[5] "Direct investment has long been defined as a capital movement involving continuing control by the investor....The test is not the extent of ownership, but the locus of decision-making power." Charles P. Kindleberger, *American Business Abroad: Six Lectures on Direct Investment* (New Haven: Yale University Press, 1969), pp. 3-4. Cf. Jack N. Behrmann, *Some Patterns in the Rise of the Multinational Enterprise*, Graduate School of Business Administration, Research Paper 18 (Chapel Hill: University of North Carolina, 1969); "The multinational enterprise is not acting like an agglomeration of domestic companies, loosely held by equity shares, but like a closely controlled single enterprise, located in markets separated by national boundaries and operating under several national governments. Its essential feature is 'unity in diversity',", p. 62.

[6] See, for example, Irving Brecher and S. S. Reisman, *Canadian-United States Economic Relations* (Ottawa: Queen's Printer, 1957).

[7] Foreign direct investment is often described as a "package" of factors, in each case comprising some combination of product line, technology, markets, management, capital and certain intangibles. See, for example, *Foreign Direct Investment*, p. 397 and *passim*. There is, further, the point that foreign direct investment may increase in extent without any actual international transfer of funds, as when a

investment may be as much capital formation as it is capital movement." See Kindleberger, op. cit., pp. 2-3 and Behrmann, op. cit., pp. 72-86.

[8] From Foreign Direct Investment, op. cit., pp. 13-15; Levitt, op. cit., pp. 64-65.

[9] Foreign Direct Investment, op. cit., p. 13. Cf. Levitt, op. cit., pp. 64-65. The contribution of foreign direct investment to the Canadian Gross National Product has been variously estimated within a range of one to three per cent. It should be noted that these studies assume the efficient use of capital and less than full employment, neither of which conditions have always been present in fact. See R. G. Penner, "Policy Reactions and the Benefit of Foreign Investment," Canadian Journal of Economics, III, 2 (May, 1970), pp. 213-222; John Helliwell and Jillian Broadbent, "How Much Does Foreign Capital Matter?," B.C. Studies, 13 (Spring, 1972), pp. 38-42; T. L. Powrie, "What Does Foreign Capital Add?," Canadian Forum, LI (January-February, 1972), pp. 34-37.

[10] Kindleberger, op. cit., pp. 3-4.

[11] Levitt, op. cit., p. 63.

[12] Foreign Direct Investment, op. cit., p. 25.

[13] Ontario, Report of the Interdepartmental Task Force on Foreign Investment, November, 1971, p. 23.

[14] Foreign Direct Investment, op. cit., p. 14.

[15] H. G. Aitken, American Capital and Canadian Resources (Cambridge, Mass.: Harvard University Press, 1961), pp. 66-67. See also H. E. English, "The Political Economy of International Economic Integration: A Brief Synthesis," in Axline, et. al., op. cit., p. 36. "The main focus of concern about foreign capital in the 1960's has shifted to the stock of such capital in Canada, and not the flow of new capital. It is the operation of foreign enterprises that now attracts greater attention from Canadian critics."

[16] A clear and concise discussion of the effect of centralized management and integration of the international enterprise on its foreign subsidiaries is available in Behrmann, op. cit., Chapter 3; cf. Foreign Direct Investment, op. cit., Chapter 24, especially the discussion of "truncation," "rationalization," and "miniature branch plant replica," pp. 405-415.

[17] Litvak, Maule and Robinson, op. cit., p. 22.

[18] Wilkinson, op. cit., pp. 144-145; Safarian, op. cit., Chapter 4. Safarian's findings are evaluated in Wilkinson's theoretical discussion of the question, pp. 125-131.

[19] *Foreign Direct Investment*, pp. 163-164 and Table 29.

[20] *Ibid*., p. 180.

[21] The question whether the prices at which goods are exchanged between Canadian subsidiaries and their foreign parents is particularly serious given the proportion of total Canadian trade which is made up of such exchanges. In 1967, for example, companies with twenty-five per cent or more foreign ownership "indicated that 67 per cent of their exports and 70 per cent of their imports were with parents or affiliates abroad . . . . We can estimate that 44 per cent of Canada's total exports and 40 per cent of total imports were accounted for by the shipment of products between parents and subsidiaries." H. E. English, B. W. Wilkinson and H. C. Eastman, *Canada in a Wider Economic Community*, Private Planning Association of Canada (Toronto: University of Toronto Press, 1972), p. 30.

[22] *Foreign Direct Investment*, p. 180.

[23] Wilkinson, *op. cit*., p. 159.

[24] Safarian, *op. cit*., pp. 274-276 and 295. Safarian's findings with respect to imports receive thorough discussion in Wilkinson, *op. cit*., pp. 127-130.

[25] *Foreign Direct Investment*, p. 193.

[26] *Ibid*., p. 208; Wilkinson, *op. cit*., pp. 128-129.

[27] Safarian, *op. cit*., p. 280.

[28] *Ibid*., p. 280.

[29] *Foreign Direct Investment*, p. 123.

[30] *Ibid*., pp. 122-124; Cf. Wilkinson, *op. cit*., p. 161.

[31] *Foreign Direct Investment*, *op. cit*., pp. 142-143.

[32] Safarian, *op. cit*., p. 270.

[33] *Ibid*., p. 270.

[34] See *Ibid*., p. 272. (The quoted definition of inactive boards is substituted from Page 68.)

[35] In the case of the multinational corporation, "profit maximization proceeds in two stages. First, the corporation must find prices and outputs that make pre-tax profits a maximum. Then, it must choose transfer prices and a profit target in each subsidiary such that the global tax bill is a minimum. *Ceteris paribus*, the corporation will minimize the tax bill by allocating profits to the company with the

lowest tax rates." L. W. Copithorn, "International Corporate Transfer Prices and Government Policy," Canadian Journal of Economics, IV, 3 (August, 1971), p. 329.

[36] From material prepared by the Hon. Eric Kierans, formerly President of the Montreal Stock Exchange, as Appendix B to "The Economic Effects of the Guidelines," an address to the Toronto Society of Financial Analysis, February 1, 1966 (mimeographed), as quoted in Levitt, op. cit., p. 85.

[37] Ibid., p. 83.

[38] See Bourgault, op. cit. and Levitt, op. cit.

[39] See, for example, Bourgault, op. cit., pp. 95-98; Foreign Direct Investment, pp. 163-165. Safarian has commented on this line of argument about stunting of the growth of indigenous capacity (with specific reference to Levitt) that "such arguments can be regarded simply as a plea for more protection for skilled domestic groups. As such, their justification would have to be put in terms of infant industry arguments extended to nationality of ownership...." See his "Foreign Direct Investment from a Canadian Perspective," in Axline, et al., op. cit., pp. 282-283.

[40] Foreign Direct Investment, pp. 412-413; Levitt, op. cit., pp. 145-125.

[41] Bourgault, op. cit.

[42] A review of the problems is made in Litvak, Maule and Robinson, op. cit., pp. 23-34. Also, see Levitt, op. cit., Chapter 1; Foreign Direct Investment, Chapter 16. The concern with extra-territoriality is present at the origin of the public debate on foreign control in Canada. It pervades two of the earliest and most widely discussed works on the topic in the Sixties, namely, The Gordon and The Watkins Reports. The latter states explicitly that it regards the extension into Canada of American law by means of the foreign controlled subsidiary to be the most serious cost to Canada of foreign ownership. Cf. Safarian, "Canadian Perspective," op. cit., p. 291.

[43] This problem is discussed analytically in Foreign Direct Investment, Chapter 18. The conclusion is that, while foreign control does not seem to have a direct bearing on the selection of Canadian governments, it has had some influence on both the content and implementation of public policy. "Foreign control can also make more difficult the task of implementing policy, although this is by no means a major problem in most situations" (p. 307). It is interesting to compare both the volume and quality of evidence used by the writers of this study, as between the economic and political dimensions of foreign control. The discussion of the political dimensions is not supported by any systematic use of data and relies exclusively on isolated examples for illustrative purposes. The experience of six

foreign controlled firms with Canadian public policies is related in Litvak, Maule and Robinson, *op. cit*., Part II. Cf. Copithorn, *op. cit*., and Safarian, "Canadian Perspective," *op. cit*., p. 289.

[44] Kingman Brewster, *Law and United States Business in Canada* (Montreal: Canadian-American Committee, 1960), p. 16. Brewster makes the point that American courts will defer to the authority of Canadian courts to the extent that a United States court will not require what a foreign state prohibits, nor will it prohibit what a foreign state requires. This would seem to place the onus on host states such as Canada to be more vigorous in applying law to foreign controlled business, assuming that Canadian governments do in fact wish to modify their conduct. Cf. *Foreign Direct Investment*, p. 272.

[45] There are other questions wrapped up in antitrust legislation, such as market-sharing and other agreements between foreign parent corporations and their Canadian subsidiaries. There is speculation that American antitrust legislation encourages wholly owned subsidiaries in Canada as a substitute for joint ventures between Canadian firms and United States subsidiaries in Canada. See Litvak, Maule and Robinson, *op. cit*., pp. 26-28; *Foreign Direct Investment*, pp. 273-274. The latter work stresses the point that is the lack of a Canadian policy in the matter of joint ventures which allows United States courts to direct action in Canada.

[46] What these changes must be in substance is an argument I leave to economists. Numerous proposals are put forward in nearly all of the works already cited.

[47] After pointing to the need for a change in the mix of general economic policies aimed at improving the efficiency of the economy as a whole and to the need for measures strengthening particular domestic capabilities, *Foreign Direct Investment* discounts the usefulness of enlarging the scope of Canadian controlled business and recommends instead "flexible administrative intervention on a case-by-case basis," some of which intervention would be restricted to foreign controlled firms (pp. 432-433).

[48] All of the approaches which have been suggested here to be possible have been documented to be in use by businesses and other interest groups. Good summaries of the breadth of interest-group relations with government in Canada can be found in F. C. Engelmann and M. A. Schwartz, *Political Parties and the Canadian Social Structure* (Scarborough: Prentice-Hall of Canada, 1967); Richard J. Van [illegible]on and Michael S. Wittington, *The Canadian Political System: Environment, Structure and Process* (Toronto: McGraw-Hill Co., 1971); H. J. Dawson, "An Interest Group: The Canadian Federation of Agriculture," *Canadian Public Administration*, III (1960), pp. 134-149; H. J. Dawson, "The Consumers Association of Canada," *Canadian Public Administration*, VI (1963), pp. 92-118; S. D. Clark, *The Canadian Manufacturers' Association: A Study in Collective Bargaining and Political Pressure*

(Toronto: University of Toronto Press, 1939); Malcolm Taylor, "The Role of the Medical Profession in the Formulation and Execution of Public Policy," Canadian Journal of Economics and Political Science, XXX (1964), pp. 157-175; D. Kwavnick, "Pressure Group Demands and the Struggle for Organizational Status: The Case of Organized Labour in Canada," Canadian Journal of Political Science, III (1970), pp. 56-72; H. A. Logan, Trade Unions in Canada: Their Development and Function (Toronto: Macmillan Co., 1948); Gad Horowitz, Canadian Labour in Politics (Toronto: University of Toronto Press, 1968); Robert Presthus, Elite Accommodation in Canadian Politics (Toronto: Macmillan Co., 1973); K. Z. Paltiel, "Contrasts among the Several Canadian Political Party Finance Cultures," ed. A. J. Heidenheimer, Comparative Political Finance: The Financing of Party Organizations and Election Campaigns (Lexington: D. C. Heath and Co., 1970), p. 109; H. G. Thorburn, "Pressure Groups in Canadian Politics: Recent Revisions of the Anti-Combines Legislation," Canadian Journal of Economics and Political Science, XXX (1964), pp. 158-174.

[49] John Porter, The Vertical Mosaic: An Analysis of Social Class and Power in Canada (Toronto: University of Toronto Press, 1965). It is worth noting at some length that the foreign control of Canadian corporations presented Porter with considerable difficulty in delineating the Canadian economic elite for purposes of his study. In fact, he offers two definitions of the Canadian economic elite, referring in one instance to "those who occupy the major decision-making positions in the corporate institutions of Canadian society," and in another to "those directors of the dominant corporations who reside in Canada" (pp. 263 and 273). There are some difficulties in accepting the two formulations as equivalent.

The elite by the first definition could be delineated only on the basis of information concerning the decision-making structure of Canada resident corporations, and might therefore include persons who are both foreign citizens and foreign residents, if, for example, it could be shown that in their capacity as officers in an American parent firm of a wholly-owned subsidiary in Canada they clearly occupied major decision-making positions in a corporate institution in Canada society. The second definition avoids this problem because it is based geographically. When Porter eventually operationalizes his definition of the economic elite, he adopts the geographical approach. Starting initially with 183 dominant corporations, thirteen of these corporations were dropped from examination because their directors could not be identified. (Ten of these thirteen corporations were wholly-owned American subsidiaries.) This left 170 corporations, and 1,613 directors. However, 256 of these directorships were held by American residents and 53 by residents of the United Kingdom. The remaining 1,307 directorships, roughly 81 per cent of all the directorships of the 170 corporations, were held by Canadian residents, although Porter points out it cannot be assumed that all of them are Canadian citizens. It is this group of 1,307 directors which Porter adopts as the Canadian economic elite (p. 268).

Porter goes on to make an interesting claim which underlines his difficulty in defining the Canadian economic elite: to the 256 directorships which were excluded from the Canadian elite because of their United States residence, he adds a further 117 directorships of wholly-owned subsidiaries of American firms which were included in the elite because they were held by Canadian residents; and Porter then claims that the resulting sum, 373 directorships, represents the potential influence of American corporations. Thus, it seems to me, Porter fails to provide a clear answer to a question he himself asks, namely, "whether or not the economic elite for Canada should include foreign resident directors" (p. 266). Rather, to be more accurate, I should say that Porter's practical answer to this question, which is that it should not, is not totally satisfactory. Porter himself points out the reason for this; it is "the outstanding feature of Canadian economic structure--foreign ownership and control of a large number of Canadian corporations. Foreign 'control' implies important decisions about the Canadian economic system are made outside the country. Rather than a Canadian elite, we should perhaps be searching for a foreign or international elite" (p. 266).

[50] It has been suggested that financial contributions by American controlled resource industries to provincial party organizations have made these organizations more independent of their federal counterparts and thus exaccerbated federal-provincial conflict. K. Z. Paltiel, *Political Party Financing in Canada* (Toronto: McGraw-Hill, 1970), pp. 5-6, as cited by Stephenson in Axline, *et. al.*, *op. cit.*,

[51] This research is reported in Appendix A.

[52] *Foreign Direct Investment*, *op. cit.*, pp. 301-302.

[53] *Ibid.*, p. 301.

[54] *Ibid.*, p. 302.

[55] *Ibid.*, p. 305.

[56] *Ibid.*

[57] *Ibid.*, p. 304.

[58] G. Bruce Doern and Peter Aucoin (ed.), *The Structures of Policy-Making in Canada* (Toronto: Macmillan of Canada, 1971), p. 4.

[59] *Ibid.*, pp. 4-5.

[60] Theodore Lowi, *The End of Liberalism: Ideology, Policy and the Crisis in Public Authority* (New York: W. W. Norton and Co., 1969), pp. 85, 419, 233 and *passim*.

CHAPTER III

THE CANADIAN PETROLEUM INDUSTRY AND CANADIAN ENERGY POLICY: THE BORDEN COMMISSION AND THE CREATION OF THE NEB

The production, transportation and marketing of oil and natural gas have become major issues in Canada only since 1950, when the potential capacity of the new industry in Alberta appeared almost certain to exceed the real and anticipated market in the producing province. From the outset, the producers of oil and natural gas have actively sought to shape national policy on these issues in a form most amenable to their interests. The present chapter and the one following are devoted to an examination and analysis of the involvement of the industry in the formulation and implementation of federal policies relating to pipe line construction and natural gas exports from the time of the inception of the industry to the year 1971. This task is divided chronologically into two parts: the present chapter emphasizes the proceedings and recommendations of the Royal Commission on Energy, the creation of the National Energy Board, and the promulgation of the National Oil Policy; while Chapter IV below emphasizes the proceedings and decisions, since 1960, of the National Energy Board.

The aim of this chapter and the succeeding chapter is to reveal both the extent of the involvement of foreign controlled corporations in the formulation and implementation of federal policies on the matters already mentioned and the degree to which the policies

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adopted and decisions made have resembled the expressed preferences of the foreign controlled corporations involved. Both chapters, therefore, not only relate the positions advocated by foreign controlled corporations and other interested parties on the matters to be decided but also describe and attempt to analyze in some detail what decisions were actually made by the authorities involved, namely, the Royal Commission on Energy (the Borden Commission) and the National Energy Board. Following this discussion, there is an examination in Chapter V of what the government and members of parliament have had to say at the time on the same questions.

Canada's Oil, Natural Gas and Pipe Line Policies: A Background

From the standpoint of Canadian public policy in the energy sector, it is helpful to distinguish between two basic forms of energy, electrical power and fuels. These forms of energy have had different implications for the Canadian economy and for Canadian energy policy by virtue primarily of the geographic distribution of Canadian energy resources, industrial capacity, and population. Canada's highest concentration of industry and population is located in Ontario and Quebec, more precisely in the region of the Great Lakes and the St. Lawrence Lowlands. This region (referred to here as Central Canada) is also the location of the highest consumption of energy in Canada, in the form of both power and fuels. With respect to energy supply, however, the bulk of Canadian electrical power production is in Ontario and Quebec, whereas nearly all of Canadian oil and gas production is in Western Canada. Thus, Central Canada has had ready access to adequate power resources but has had no immediate access to fuel resources, which have been available only through imports into these provinces from overseas, from the United States, or from Western Canada.[1]

Largely as a consequence of these geographic and economic factors, Canada's interprovincial and international trade in fuels such as oil, natural gas and coal, has been much more pronounced than such trade in electricity.[2] With one or two exceptions, the most contentious and persistent issues in Canadian energy policy at the federal level have involved the construction of international or interprovincial pipe lines and the related question of the proper balance between a nationally and an internationally integrated petroleum economy or, in other words, the extent of national as compared with international trade in oil and natural gas. Decisions taken by the federal government with respect to the transportation and marketing of Canada's oil and gas resources have been among the most important factors determining the demand for various sources of energy and the comparative costs of various fuels and types of electrical power generation throughout Canada.

Federal jurisdiction over the export of oil and natural gas and over the construction of pipe lines derives from Sections 91 and 92, respectively, of the BNA Act.[3] Section 91 includes the regulation of trade and commerce among the class of subjects which are designated to be within the exclusive domain of the federal government. Section 92-10, in the course of setting out the powers of the provinces, stipulates that the Parliament of Canada has jurisdiction over works and undertakings connecting any two or more provinces or extending beyond the limits of any province. Until 1959, these powers were exercised through the Pipe Lines Act of 1952, which gave the Board of Transport Commissioners authority over the construction and operation of gas and oil pipe lines used for domestic and international trade,[4] and through the Exportation of Power and Fluids and Importation of Gas Act of 1955, under which no power or fluid could be exported, no gas imported, and no pipe line or transmission line needed for such commerce could be constructed, without a licence granted by the Governor-General in Council.[5] Since 1959, federal jurisdiction over these matters has been exercised primarily by the National Energy Board under the National Energy Board Act, and the decisions of the NEB have constituted both a large part of Canadian energy policy and a focus of much of the politics of energy in Canada.[6] Decisions taken during the decade prior to the Board's creation, however, both shaped the basic structure of the Canadian natural gas industry and established some of the basic principles of Canadian oil and gas policy. These decisions are the subject of the remainder of this chapter.

Decisions Prior to the Royal Commission on Energy

There were three decisions of significance to this discussion taken during the 1950's: the first export of natural gas from Western Canada, which went to industrial markets in Montana; the construction of Westcoast Transmission's pipe line and the accompanying export of natural gas from northeastern British Columbia to the American Pacific Northwest; and the construction of Trans-Canada Pipe Lines.

The first export of natural gas from Alberta, whose gas industry was only beginning to grow beyond the capacity to serve local markets, occurred in 1951. The Alberta government approved this export, apparently, only at the behest of the federal government, in particular the Department of Defence, which had in turn been asked by the American Defense Department to intercede with the Alberta government. Alberta was hesitant to export natural gas at a possible risk to the potential needs of the province, but the mineral and metallurgical industries of Montana were under severe pressure from the demand placed on them by the Korean War to obtain incremental supplies of natural gas.[7] The export was approved by the appropriate federal and provincial agencies in 1951, at prices which were more clearly related to Albertan well-head prices than to the price of alternative sources of fuel in the Montana market.[8]

This case reveals an interesting conflict. Against the sale were the fear of the Provincial Government that exports would threaten the security of supply for its own and Canada's future needs and the strong public opposition to exports which threatened to increase local gas prices and discourage industrial development in the province. In favour of the sale were the desire of petroleum producers to obtain as soon as possible a market for their growing gas reserves and the federal government's predictably favourable attitude toward assisting an ally in a war situation.[9] The latter favourable point may account for the evident lack of concern with maximizing the revenue on the export sale. It is further worth noting that this, the first occasion on which a government showed reluctance to export gas out of concern for the protection of its future requirements, was also one of the first occasions on which the producing industry advanced its argument to authorities in Canada that the most effective insurance for future domestic requirements is an expanding industry and that gas exports are a necessary condition for the expansion of the industry.[10]

The question of obtaining the maximum, or even an adequate return on export sales, arose in the next few years with greater force in the case of Westcoast Transmission. The origins and development of the Westcoast project have been critically reviewed numerous times, one of these by a royal commission, and the price at which gas was initially exported by Westcoast has been a primary focus of interest.[11]

The project was planned initially to bring natural gas from northeastern British Columbia to Canadian markets in the Vancouver area and in south-central British Columbia, but it was not deemed to be economically feasible without the scale economies which could be obtained through serving markets in the Northwestern United States through the same facilities. Hence, the justification of exports in this case was their contribution to, indeed their status as a *sine qua non* for, the service of a Canadian market, and approval from Canadian federal authorities was obtained on this basis. However, the necessary approval of an American authority, the Federal Power Commission (FPC) was not obtained. The basis of the American agency's rejection was apparently its reluctance to allow an American market to depend exclusively upon foreign supplies of natural gas. In the course of steps taken to overcome this objection, facilities were installed to bring gas from Texas into the markets which Westcoast hoped to supply, and eventually the FPC approved the import of gas from Westcoast as a supplementary supply and at prices which were designed to recoup part of the costs of the line installed for the Texas gas.[12]

The price at which the import was approved was substantially reduced from the initial Westcoast proposal. It was also sufficiently low to enrage the Canadian customers of Westcoast who were paying prices considerably in excess of those paid by the American importing company. Moreover, no price escalations were allowed by the FPC in the export agreement. In this case, then, the availability of natural gas to Canadians and the costs to be borne by Canadians in obtaining gas were tangibly affected by American federal authority in its promotion of American interests. It may be argued, of course, that as long as the export assisted in providing Canadians with access to a valuable resource they would otherwise have failed to obtain, the consideration of the export price is secondary. This point is open to dispute. What is less disputable, and in fact a matter of public record, is that this contract and its controversial price of twenty-two cents per thousand cubic feet (Mcf) was not superceded until 1968, and was a point of occasionally heated conflict between Canadian and American authorities for a number of years.

The Federal Power Commission again played, directly and indirectly, a significant part in the political drama of 1956 surrounding the Trans-Canada Pipe Line project. This firm was created

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by a merger of two pipe line companies who had been promoting rival plans to market large quantities of Alberta natural gas, one of them intending to transmit the gas to Central Canada via Northern Ontario, the other intending to serve Canadian markets only as far as Manitoba and to export the bulk of its capacity to the American mid-west. The Trans-Canada project was, correspondingly, a combination of these two schemes.

As with the Westcoast project, the export of gas was deemed to be necessary to the economic feasibility of the entire project, particularly with respect to the raising of private capital. However, also in this instance, permission to export gas to the United States was not forthcoming in the time permitted the project by other constraints.[13] Nevertheless, the Canadian government, and the Minister of Trade and Commerce (C. D. Howe) in particular, was determined to see the completion of the Canadian portion of the project. In the light of this determination and under pressure of time, the Governments of Canada and Ontario proposed to establish a crown corporation to construct the most costly section of the line and, further, to advance ninety per cent of the capital for the remainder of the line in the form of a loan to Trans-Canada from this crown corporation. In presenting to Parliament the bill to enact this proposal, Howe announced that closure would be applied, and one of the most intense Parliamentary battles in Canadian history was under way.

While Howe's use of closure tended to shift Parliament's attention away from the issues raised by the bill itself, the Trans-Canada story does touch several points of significance to this

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discussion. The first of these concerns the relationship between the service of Canadian and export markets. As with Westcoast, the feeling was that the economies of scale available through the simultaneous service of export and national markets were necessary to establish the economic feasibility of the venture.

A second significant point is the intensity of concern with which the Canadian public greeted the issue as a whole.[14] Some foreboding about Parliamentary and popular opposition to the proposal must have been part of Howe's decision to impose closure from the start. As it unfolded, this opposition seems to have had to do primarily with the fact that this assistance was to be extended without obtaining public ownership, control, or even equity in what was, to boot, an American-owned company.

The Hearings and Recommendations of the Borden Commission

An extraordinarily vituperative Parliamentary debate on Howe's Trans-Canada bill and an unusually powerful upsurge of dissatisfaction with the previous Liberal government preceded Diefenbaker's striking of the Borden Commission. While it is difficult to say to what extent this reflected a strong desire for new departures in policies toward oil, natural gas and pipe lines, it is the case that the Commission undertook its task of redefining Canada's oil and gas policies in the midst of a level of public concern whose intensity and scope would not be seen again on these questions for the next fifteen years.[15] In the light of this, it is significant that the new Government left very wide discretion to the Commission.

It is evident from the vague generalities in which the terms of reference of the Commission were set out that the Government had not, in fact, decided the substance of a new national energy policy, the effective implementation of which might be aided by the conclusions of a royal commission inquiry. The Government, rather, appears to have entrusted the Commission with the task of deliberating on and formulating the basic direction of Canadian energy policy.[16]

The Government apparently did favour the institution of a National Energy Board to administer whatever might be the eventual provisions of the new energy policy. As to the substance of the policy so administered, the attention of the Commission was directed, first, toward the adequate protection of Canadian energy requirements and, second, to something called "the most effective use" of Canadian resources "in the public interest," which remained undefined. As such, of course, the terms of reference were vacuous, for "effective use" could be interpreted to mean, among many other things, preference given to homeowner consumption, industrial consumption, thermal-electric production, foreign consumption, short or long-term cash return, a guaranteed long-term surplus to ensure low prices to consumers, a high rate of exports to ensure higher prices to producers and continuous resources development, and the development of Canadian industries around an assured supply of low-cost premium fuel.

This list, as revealed below, is not arbitrary, but rather sums up many of the interpretations given to the notion, "the most effective use in the public interest," by various groups interested

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in the Commission's recommendations. The important point is that there obviously must be some means of discriminating between the variety of policies that could realistically be claimed to protect Canadian requirements and to promote the most effective use of Canadian resources. Presumably, the notion of the public interest was added to qualify the meaning of effective use, but in fact it cannot, for the notion of the public interest is as empty as the notion of effective use. Hence, the job of the Commission was not only to recommend "the policies which will best serve the national interest," but it was also to define the national interest.

According to the Order, the Commission had, further, to define the national interest "in relation to the export of energy and sources of energy from Canada," and regarding "the efficient and economical operation of pipelines." (In a later paragraph, the phrase "to safeguard the interests of Canadian producers or consumers of gas" is added, presumably to clear up the ambiguity of "any special measures" which, the Order suggests, might be taken in relation to Trans-Canada Pipelines.) The argument here is not that the national interest is an improper standard for discriminating among possible policies, but rather that close attention must be paid to the definition of the national interest and to who defines it. Since the specific content of the national interest in energy matters was left to the Commissioners to define, the alternative formulations presented to it by interested parties deserve close attention. The guiding question here is: Whose particular interests were eventually taken by the Commission to constitute the national interest?

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It is worth noting at this point that there is no evidence that the Commissioners themselves provided a vehicle of representation for firms in the oil and gas industries, although three of the six Commissioners and both of the two advisors held either an executive office or a directorship in at least one corporation, according to the Financial Post's Directory of Directors for 1957. The corporations so "represented" on the Commission fell largely in the financial, public utility, and manufacturing categories.

The hearings and recommendations of the Borden Commission will be examined here with respect to three matters: the price and volume of natural gas exports; the construction of pipe lines; and the marketing of Canadian crude oil. In addition to its importance as a factor contributing to the formation and eventual operations of the National Energy Board, the Commission's record is a valuable indication of the lay of the political landscape after a decade of development in Canada's petroleum industry.

Natural Gas Exports

On the question of gas exports to the United States, it seems convenient to divide the submissions received by the Commission into two areas of concern: first, whether gas surplus to Canadian needs should be exported to the United States and, second, how to arrive at an estimation of an exportable surplus.

There were several extensive briefs expressing the concern that Canadian homeowners and commercial and industrial consumers present and future should have a guaranteed long-term supply of cheap natural gas. The City of Calgary, for example, proposed the setting aside of nearby fields of "sweet" gas for home and commercial consumption by Calgarians. It argued, as others have argued since, that the export of gas means inevitably that Calgarians and other Canadians will be forced to rely on the development supplies of gas which would be more remote, would require more processing before use, and would therefore be more costly.[17] The Government of Alberta sought a similar objective for all Albertans by proposing that a thirty-year reserve of gas for Alberta be assured before allowing exports.[18] The City of Edmonton similarly insisted that increased demand brought about through exports should not be allowed if it entailed higher prices to consumers.[19]

The Government of Saskatchewan also stated that its policy was to reserve gas for domestic and commercial consumption. It further submitted that it would be absurd to export natural gas to the United States at a given price (i.e., twenty-two cents per thousand cubic feet) until all accessible Canadian markets had been satisfied at this price. It further suggested that the Canadian government purchase supplies in the ground for later delivery to Canadian markets, thus trying to meet the argument of producers that they must have a market in order to develop potential reserves.[20]

The Fuel Board of Ontario also felt that Canadian market requirements must be met at the lowest possible price before exports were allowed.[21] Finally, B. C. Electric submitted that the NEB should determine the future needs of Canadians and the availability of supplies at a given price to Canadians before authorizing exports.[22]

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The B. C. Electric brief also stressed the role of natural gas supplies as an impetus to Canadian economic development. It cautioned, for example, that if the gas exported were to be used for thermal-electric production, Canada would be better off to produce the electricity for export.

The above list does not exhaust, but does fairly represent the positions taken by those expressing reservations on the desirability of exporting natural gas. The key point in the context of the present discussion is the stress placed by these parties not simply on the long-term availability of natural gas for Canadian consumers, but also on long-term availability at stable prices. However, the parties primarily interested in the production and marketing of natural gas, and particularly foreign controlled producers, were unanimous in laying stress on availability only, that is, strictly on the size of potential reserves and not on the possible higher cost of future reserves.[23]

The Canadian Petroleum Association (C.P.A.), Westcoast Transmission, Shell Canada, and others, continuously stressed the importance of export markets in encouraging the development of reserves.[24] However, since the dynamics of the interdependence between markets and reserve development were conceded to be such that the excess demand caused by exports would raise prices, and that, in turn, the higher prices to producers would stimulate increased exploration and development, the position taken by these companies was clearly antagonistic to the principle of ensuring that gas would be available to Canadian consumers at a given, relatively low price. (An interesting reflection of this relationship between imports and prices is found in one of the briefs supporting exports, which lauded the benefits gas exports would bestow on the coal industry when the price of natural gas in Western Canada eventually rose to a level where coal producers could capture Canadian markets they hadn't enjoyed for years.)[25] Thus, the foreign controlled production and transmission companies were working to shift attention away from the consideration of prices to Canadian consumers and toward the consideration of the expansion of the industry and the development of reserves. If this could be accomplished, the argued interdependence between higher levels of exports and increased rates of exploration and discovery could be utilized to influence yet another side of the question concerning exports, namely, the formula to be used in estimating the volumes of gas available for export.

While several of the foreign controlled companies explicitly rejected the policy of ear-marking specific fields for domestic consumption, none appears to have challenged the principle that Canada should export only gas found to be surplus to Canadian requirements.[26] Rather, nearly all producing and exporting companies set about to demonstrate conclusively that a sizeable surplus existed. In doing this, they focussed their attention on estimates of probable and ultimate reserves and on estimated rates of discovery, rather than on proven reserves and argued, further, that future Canadian requirements could be safeguarded by means of future rather than currently proven reserves.[27]

There would appear to be no small difficulty in getting reasonable figures for exportable surpluses, largely because a variety of formulae could be employed for doing so, as the Government of Saskatchewan pointed out in its brief and as the great variety of estimates submitted to the Commission exemplify. Moreover, the key question of relating estimated reserves to estimated Canadian requirements in order to arrive at a figure denoting an exportable surplus is clearly a political rather than a technical matter, since it unquestionably entails a number of judgements in which values play a much more central role than do facts or proven methods. An example of such a matter for judgement is the degree to which the meeting of future Canadian requirements should be allowed to depend upon future reserves.

It is perhaps not surprising, therefore, that toward the end of the hearings of the Commission, after at least two previous appearances, B.A. Oil appeared again specifically in order to table a paper entitled "Procedure for Determining Exportable Volumes of Gas," along with a suggestion that the best way to settle the question of reserves is to hold annual meetings on the subject between the C.P.A. and the relevant government agencies.[28] Thus, the hearings of the Commission on this question exhibit, in volume after volume, what I would like to call "the politics of surplus estimation." Since the national interest was generally accepted to be the export of surplus gas, a conflict arose among the interested parties to determine how much gas would ultimately be found and how long it would last. We must turn to the First Report of the Commission to discover whose estimates, or procedures for arriving at estimates, became the basis for the Commission's recommendations.

Recommendation I of the Commission's First Report endorsed the principle that any gas surplus to Canadian needs should be exported.[29] Moreover, after projected supply of and demand for natural gas in

Canada, the Commission suggested that "on any reasonable assumption regarding the growth of reserves in Alberta and British Columbia, there will be a moderately increasing volume of gas in excess of Canadian requirements available for export."[30]

The Commission estimated Alberta's year-end disposable reserves to be 23.7 trillions of cubic feet (Tcf) in 1958, increasing to 35.2 Tcf in 1987 by one formula and 52.2 Tcf in 1987 by another formula. The first formula assumed an average annual gas discovery rate of two Tcf through to 1970, followed by an annual rate of one Tcf to 1987, which the Commission claimed was a conservative assumption. The second formula, less conservative, assumed an average annual increase in Alberta proved reserves of two and half Tcf, falling off to two Tcf annually, approaching 1987. The latter assumption is based on a projection of the average annual increase in Alberta reserves from 1950 to 1958.

Why this rate of discovery is expected to continue was not explained by the Commission, just as no reasons were given for assuming that, if the higher expectation did not hold true, the more conservative assumption would. However, the Commission did conclude, "from the evidence available at this time," that the higher reserve projection "would be assured if the industry had the added incentive which would be provided by increased export markets," the latter being rather a familiar formulation to one who has read the submissions to the Commission by the foreign controlled oil companies.[31]

On the demand side, the Commission presented figures for total

Canadian demand which were based on the higher of the two principal market forecasts of the requirements of Trans-Canada Pipe Lines Ltd. for the thirty-year period, one of which was submitted by Trans-Canada Pipe Line itself and the other by Alberta and Southern Gas Co.[32]

The point with all these figures is not that they were inaccurate; it is rather that the Commission used no disinterested sources of data with which to determine whether or not they were accurate. Accepting the "safer" of two or more estimates of Canadian supply, demand, or other factors, or "splitting the difference" between them, may seem an acceptable practice to all the interested parties who have an opportunity to submit estimates; but it assumes a good deal about the reliability of the range of estimates submitted. When the only sources of estimates are parties with a direct pecuniary interest in the policy eventually adopted, the fact that there is a highest figure and a lowest figure would seem to be no guarantee that reality lies between the two, or even at either extreme.

Turning now to Recommendation 2, several points arise from one of the Commission's comments on the matter of Export Licences.[33] The Commission began by re-stating the principle that an application for export should not be permitted if it "would in any way interfere with the supply of the reasonably foreseeable natural gas requirements of those parts of Canada within economic reach of the producing provinces."[34] The Commission did not say, however, whether upward pressure on the price of gas to Canadians was to be deemed one of the ways in which an export permit interfered with supply. Indeed, the Commission was surprisingly silent in some cases and vague in others

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on the question of prices, especially given the emphasis placed on this matter by many parties represented before the Commission.[35] Indeed, one possible means of ensuring a low price to Canadians, supported by at least two municipal governments and one provincial government, was rejected outright: "The Commission believes that, in the administration of export policy, it would be unfair to producers of natural gas to require, at this time, that proven reserves be set aside for all long-term future needs in Canada."[36] That policies recommended as being in the Canadian national interest necessarily entail fairness to producers of natural gas is an assumption which may or may not be valid, but it is one which the Commission did not bother to justify.

When the Commission did address the question of the price provisions of an application for an export licence, it had this to say:

> It is necessary to ensure that the minimum export price is fair and reasonable. Where sales to Canadian distributors are involved, the price relationship, between Canadian sales and sales for export, should be such that the Canadian sales will not contribute more than a fair and reasonable proportion of the total return to shareholders on their investment on the gas transmission company.[37]

This statement occurs in the form of a comment rather than a formal recommendation. However, the Commission did formally recommend the rescinding of a price regulation already in force under the Exportation of Power and Fluids and Importation of Gas Act. This regulation read: "The price charged by a licensee for power or gas exported by him shall not be lower than the price at which power or gas, respectively, is supplied by him or his supplier in similar quantities and under similar conditions of sale for consumption in Canada."[38] The

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Commission's argument for revoking this regulation is also of interest:

> While the Commission believes it understands the result which Regulation 9 was designed to accomplish, nevertheless we have found it most difficult and, indeed, almost impossible to interpret. In the first place, the quantities and conditions of natural gas sales vary greatly as between contracts, so that price comparisons are difficult to make. The usual method of determining appropriate prices is based on a computation of cost of service and there are various methods of allocating certain of these costs to different types and quantities of sale. Furthermore, the Regulation does not take into account other factors, such as competitive prices and value of service, factors which many authorities believe should be taken into account in the setting of prices.
>
> The Commission believes that, if a National Energy Board inquires into the terms and conditions of each proposed export contract, satisfies itself that the terms are fair and reasonable and in the public interest, . . . the objectives which the Commission assume were envisaged by Regulation 9 will be achieved.[39]

The logic of the Commission's argument against Regulation 9 is somewhat opaque. First, to point out the difficulty of determining whether or not gas is being sold in similar quantities and under similar conditions of sale, is one thing; it is quite another to dispense with the principle that if and when these similarities can be established, the export price shall not be lower than the Canadian price, which is the only reasonable interpretation of Regulation 9 one could imagine. Secondly, while there is undoubtedly truth in the Commission's claim that the problem of determining the terms and conditions of export contracts is highly complex, there is no obvious reason why the problem should be any less complex when the licensing authority is judging a contract by the Commission's standard of "fair and reasonable and in the public interest," than when it is judging the contract by Regulation 9's standard of an equal or lower price for Canadian customers. Indeed, one wonders, and this is the third point, how the Commission,

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which found Regulation 9 difficult to interpret, proposes that the National Energy Board should extract unambiguous meaning from the phrase "fair and reasonable and in the public interest."

In the light of later developments, one is left in an ambiguous position with respect to the export-pricing arrangements recommended by the Commission. On the one hand, they were conscious in their comments of the importance of such factors as competitive prices and value of service ('opportunity prices'), the need for escalation clauses in export contracts, and the effect of exports on the market for by-products. On the other hand, the wording of most of their actual recommendations in these matters--wordings which often found their way into the NEB Act--was so vague that they could not ensure that these considerations would be effectively applied to the decisions of the Board.

Pipe Line Construction

The Borden Commission recommended that the jurisdiction over pipe lines be divided between the regulation of tolls, rates, or tariffs, which would remain with the Board of Transport Commissioners, and the regulation of the construction of new pipe lines which would become the responsibility of the new NEB.[40] The Commission devoted considerable attention to the question of the initiation of new pipe line projects, primarily by virtue of its investigation into the financing and the actual or proposed export arrangements connected with both the Westcoast Transmission and Trans-Canada Pipe Line projects.

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In its recommendations concerning the issuance of licences and certificates of public convenience by a new regulatory agency, the Commission added to the considerations already discussed with respect to export licences, "the advisability of encouraging the development in Canada of processing industries relating to energy and sources of energy as distinct from the export of unprocessed raw materials."[41] It further recommended that the NEB also be required to take into account, first, the economic feasibility of the project and whether or not the project is in the national interest and, second, the financial structure, ownership, financing, engineering and construction plans involved as well as the opportunity for Canadians to participate in the financing, engineering and construction of the project.[42]

It is noteworthy that the Commission failed to address explicitly two issues which had frequently arisen in connection with the construction of pipe lines in Canada, namely, the routing of pipe lines from Canadian sources to Canadian markets completely within Canadian territory, and the desirability of projects constructed solely for export service. These issues might have been expected to receive some attention, since they were raised in Parliament during the earliest pipe line decisions and were important aspects of the two projects the Commission examined at some length. The Trans-Canada project would never have become the centre of conflict it was had it not been for the insistence of an exclusively Canadian route; and the advantages and disadvantages of sharing costs between Canadian and export markets was probably the central point of contention in the Westcoast controversy.

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The Alberta-to-Montreal Oil Pipe Line

The Commission, however, did consider one major pipe line proposal with broad national implications, the proposal to serve the Montreal market with Alberta crude oil by means of a pipe line built exclusively within Canada. The proposal was made by Home Oil Company Limited, with a group of other companies supporting the project. It was proposed to construct a thirty-inch diameter pipe line running from Edmonton to Montreal, promising to deliver 200,000 barrels per day (bb/d) to Montreal by 1960 and 320,000 bb/d by 1965, which would provide Alberta's crude oil producers a guaranteed market.[43]

Numerous other benefits to Canada were claimed to follow from this plan, which will not be discussed here except to say that two obvious implications of the scheme were the cutting back of Canada's rather high rate of oil imports and, at the same time, the lessening of the Canadian industry's dependence on the United States market.[44] It is important to note, however, that the Home Oil representative seemed to suggest that the overriding concern of his company and its associates was to obtain assured markets; and that any market, such as the West Coast or the Mid-West of the United States, would suffice if these markets had the permanence of the Montreal market.[45] Another important point in the presentation was its expressed recognition that the financial success of the pipe line could be assured only on the basis of guarantees from the Montreal refiners to use the full capacity of the line, that is, their willingness to accept the crude oil carried by the line in place of the oil they obtained at that time from their overseas sources.[46]

The opposition to the Home Oil proposal was unanimous among the large foreign controlled corporations, specifically Imperial, Shell, McColl Frontenac, British American, Standard Oil of California, Sun, and Canadian Petrofina.[47] Imperial Oil led the opposition, claiming that government protection of the Montreal market for Canadian crude was mandatory if the pipe line were to be feasible, and that such protection would entail both higher prices for Canadian consumers and greater government control of the petroleum industry, which were rejected as undesirable, the latter emphatically.[48] (However, a subsidiary of Imperial Oil, Interprovincial Pipe Lines, while questioning the advisability of a new crude oil pipe line to serve the Montreal market from Western Canada, submitted a counter proposal to up-grade its present crude oil transmission facilities as an alternative to the Home Oil proposals.)[49] When Imperial was asked whether, as a refiner, it would sign through-put agreements with such a pipe line if one were undertaken, the company replied that it would, reluctantly, fall into line with any requirements laid down by the government.[50]

All the companies listed above took nearly identical positions on the question: the principle of bringing Canadian crude to the Montreal market was rejected; a reluctance to sign through-put agreements with the proposed pipe line was expressed by most and a refusal to do so was promised by at least one; alternative market opportunities for Canadian crude, such as the north-central and Pacific states, were invariably pointed out; and governmental interference in Canada's crude oil market was generally condemned.[51] Several companies expressed a preference for a continental energy policy, whereby all North American markets would be served by the most economical sources of supply. Since all the companies mentioned so far were subsidiaries of integrated international petroleum enterprises, with interests and affiliates in production, refining, shipping and marketing in numerous countries, the similarities in the substance of their proposals can be readily accounted for. It must be pointed out that other companies without such worldwide interests and affiliations, some of them Canadian controlled, also took a stand opposing the proposed pipe line and promoted similar alternatives. Canadian Oil and the Bailey Selbourne Group provide examples.[52] However, no Canadian subsidiaries of international oil companies supported the plan.

The recommendation of the Commission was clearly to reject the proposal submitted by the Home Oil Company and associated companies.[53] The option staunchly defended by the international petroleum enterprises formed the basis of the Commission's recommended policy: the Montreal market was to be reserved for overseas sources of supply, while Canadian production was to be increased by penetrating accessible United States markets and by market expansion in Ontario and Vancouver. While one cannot argue that the recommendations of the Commission required no changes in the operations of the Canadian subsidiaries of international petroleum enterprises, it is equally obvious that the recommendations reflect precisely the expressed preferences of these firms as to the changes they would have to make.

Ultimately, it can only be concluded that the Commission succumbed to the economic rationality, lucidly expressed in the

Imperial Oil brief, of a continental as opposed to national approach to the problems of oil production and marketing.[54] Referring to a recent exemption of Canadian crude from United States import restrictions, the Commission stated:

> While we realize that the many possibilities, problems and implications may not have been fully reviewed as yet, this exemption could be the first step leading towards the development of a continental policy with respect to crude oil under which Canadian and United States crudes would be freely used in the refinery areas on the North American continent, supplemented by such imports of crude as might be necessary to augment any shortage of supply from North American sources.
>
> We mention the possibility of a continental policy not because we believe it can be developed in the immediate future but because we feel that care should be taken to ensure that Canada, by its actions and commitments now, does not jeopardize the subsequent possible development of such a policy.[55]

Three pages later, the Commission explained its recommendation that no import restrictions be imposed to secure the Montreal market with the claim that such a decision, "if made before the potentialities of United States markets were fully exploited, would, among other things, seriously impair Canada's ability to secure those markets, might prejudice Canada's position vis-a-vis existing United States import restrictions and might jeopardize the development of a Continental energy policy."[56]

The Commission went on to set down proposed guidelines for the National Energy Board to consult in exercising its authority to grant licences for the importation of crude oil.[57] The Commission felt that the Board's control over import licences, plus its control over the flow of Canadian crude by means of its authority over pipe lines, would be sufficient power to enable the NEB to shape the development of the Canadian petroleum industry. But the Commission admitted that "we have not attempted to set out the details with respect to a licencing system because we realize that exceptions might be required for certain types of crudes and that problems of a technical nature may be involved." The Commission then went on:

> We are of the view that the oil industry itself is able to supply any information and to assist in the resolution of whatever administrative difficulties may arise in putting into effect such licencing procedure. The National Energy Board, as a permanent body of the Government of Canada, provides a forum where the industry can discuss its problems at the Canadian government level. What is perhaps of more importance, this Board as an agent of the Government can and should keep in close touch at all times with the industry, in all its phases, and with all its problems, as these have a bearing upon the prosperity of the Canadian economy and of the industry itself. Consequently, we believe that the problems involved in such licencing procedure should be resolved through discussions between the Board and the industry itself.[58]

The Commission thus endorsed the principle that the Canadian national interest in petroleum matters should be defined by means of government-industry consultations.

The Borden Commission Recommendations and the NEB Act

Most of the provisions of the NEB Act which are relevant to this discussion will be spelled out in subsequent chapters. A systematic comparison of the Commission's recommendations with the provisions of the Act reveals quite a close correspondence on the matters discussed above. Further, it should be noted that on February 1, 1961, within nineteen months of the coming into force of the NEB Act, the Government also announced the National Oil Policy,

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which, in effect, implemented the solution to the oil situation recommended by the Commission.

Generally, speaking, the Act attaches fewer and less specific conditions than did the Commission to the export of natural gas and the construction of pipe lines for that purpose. In particular, there is nothing in the Act which expressly reflects the Commission's concern that exports should not be allowed to the detriment of potential industrial development in different parts of Canada; nothing which incorporates the Commission's elaboration of the criteria according to which the price at which natural gas is exported may be deemed "fair and reasonable and in the public interest," such as cost of service, "competitive prices" and "value of service;" and nothing which reflects its recognition of problems associated with the marketing of by-products of natural gas.

One of the recommendations of the Borden Commission which was translated more or less directly into the National Energy Board Act was that "having regard to the proven reserves, the export from Canada of natural gas, which may from time to time be surplus to the reasonably foreseeable requirements of Canada, be permitted under licence."[59] The Commission argued for this recommendation in a manner which also illustrated how it might be made operational. It made, first, a thirty-year projection of supply and demand in the Canadian market and, second, an estimate of the potential exportable surplus which might be available over the same period, depending upon the rate of gas discovery and development. It seemed probable to the Commission that the upper limit of the reserve projection "would be assured if

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the industry had the added incentive which would be provided by increased export markets."[60]

The point to be emphasized here is that there is a circularity to this reasoning which has persisted in export policy ever since. It is born of the producers' argument that the best protection with regard to return supply is the export of gas. The circularity consists in the fact that the volumes of gas required to justify the export of gas (that is, the volumes necessary to exceed a given reserve set aside for the protection of Canadian requirements) are allowed to depend upon the export of gas for their development.

Whether the rate of discovery and development of reserves has, in fact, any relationship whatsoever to the rate of export of gas is a question open to empirical investigation. But a problem can arise even if the new discoveries are generated. The gas to be exported and the gas whose expected development is supposed to justify the export are, of course, different lots of gas; the latter may only become available at higher cost and in more inaccessible locations than the exported gas it is to replace.

Hence, it is possible that by making exports allowable on the basis of trends in discovery, proven reserves at current prices will be exported while the protection of Canadian requirements will depend upon future reserves at higher prices. The Commission seemed to be sensitive to the dangers in this. As related above, it was prepared to concede that future Canadian requirements should be protected by reserve growth trends on the basis that "it would be unfair to the producers to require, at this time, that proven reserves be set aside for all long-term future needs in Canada," but it also urged that "the Government of Canada should require satisfactory evidence in respect of reserve growth trends and evidence that the supplies of natural gas, expected to become available by reason of the trends, are suitably located for transmission to Canadian markets."[61] As the next chapter will show, the government and the NEB seem to have taken up only the first of these injunctions from the Commission.

In summary, it is clear that the decade of the Fifties saw the laying of the foundations of a national policy with respect to the transmission and marketing of oil and natural gas. Three decisions of the federal government--those concerning the Montana export and the Westcoast and Trans-Canada projects--and a comprehensive set of recommendations from the Royal Commission on Energy, established both the actual structure of the Canadian petroleum industry and the fundamental frame of reference within which questions of the allocation of national and continental markets and the appropriate capital investments would be addressed by the government. Thus, the National Energy Board, on its creation in 1959 along the lines set out by the Borden Commission, inherited three of the four gas export ventures it was eventually to be its business to regulate, a set of conditions in its enabling statute limiting its exercise of authority, and a less concrete legacy of approaches and orientations to such matters as most effective means to the protection of Canadian requirements for natural gas and the conditions which proposed gas exports ought to meet, particularly with respect to price.

In turning in the following chapter to a review of how the National Energy Board has proceeded from this point of origin, several contrasts with the experience reviewed in the present section should emerge clearly. In particular, the government decisions of the Fifties and the Board decisions of the Sixties differ with respect to the number and extent of the activity of various interests involved in policy-making or in the consideration of policy, and the gradual decline in the impact of non-industrial interests in Canada on the decisions taken with respect to natural gas exports.

NOTES TO CHAPTER III

[1] For a comprehensive discussion of the different sources and uses of energy in Canada, see John Davis, Canadian Energy Prospects, Study for the Royal Commission on Canada's Economic Prospects (Walter L. Gordon, Chairman), Ottawa, 1957. A more recent discussion is available in Energy, Mines and Resources, An Energy Policy for Canada, Phase I, (Ottawa: Information Canada, 1973).

[2] Canadian net exports of electrical energy were 3.3 of Canadian net generation in 1972. Imports were 1.4 per cent of demand. In crude oil and natural gas liquids, exports were 54 per cent of Canadian production in 1971, and imports were 53 per cent of domestic consumption. In natural gas, exports were approximately 45 per cent of marketable Canadian production, and imports were slightly more than 1 per cent of domestic consumption. In coal, exports were 45 per cent of Canadian production, and imports were 72 per cent of domestic demand. (Percentages computed from data provided in An Energy Policy for Canada.

[3] The British North America Act, 1867, 30-31 Vict., C.3 (U.K.), Secs. 91 and 92.

[4] The Pipe Lines Act, R.S.C. 1952, c. 211.

[5] The Exportation of Power and Fluids and Importation of Gas Act, S.C. 1955, c. 14. The antecedent of this Act was the Electricity and Fluids Act, S.C. 1907, c. 7.

[6] The National Energy Board Act, S.C. 1959, c. 46.

[7] J.T. Miller, Jr., Foreign Trade in Gas and Electricity in North America: A Legal and Historical Study (New York: Praeger, 1970), p. 97; NEB, Certain Aspects of Canadian Experience with Natural Gas: A presentation to a Special Meeting of the OECD Energy Committee, Paris, September 22, 1967, pp. 33-34 (hereafter referred to as Certain Aspects).

[8] Davis, op. cit., pp. 166-167. Elsewhere Davis quotes testimony to the effect that the savings involved for one American company were not less than $3 million between 1951 and 1954 (p. 172). Davis feels that the prices at the border represented approximately one-half to one-third the cost of alternative sources of fuel in the market served.

[9] For a fuller discussion of conditions prevailing at the time of this sale, see E. J. Hanson, "Natural Gas in Canadian American Relations," International Journal, XII, 3 (Summer, 1957), pp. 188-190. Hanson points out that several companies making submissions for permission to export gas in 1950 stressed "the vulnerability in wartime of the Pacific Northwest States and British Columbia. . . ." He anticipates the consequences of more complete integration of Canadian and United States natural gas systems in these terms: "It will be less explicitly a

joint venture in the defence of North America than the DEW Line project, but it could do more to promote the kind of unity which our countries require."

[10] Hanson, op. cit., pp. 188-189. The companies also argued that "fuel costs are an element in only a few industries and that although the petrochemical industry thrives on cheap gas, it uses relatively small amounts."

[11] See Royal Commission on Energy, First Report, October 1958, Chapter I, Section A, Part III. For further elaboration of the points raised in this sketch of the Westcoast project, see Davis, op. cit., pp. 165-166; National Energy Board, Certain Aspects, pp. 33-37; Miller, op. cit., pp. 99-111; Ian A. McDougall, "The Canadian National Energy Board; Economic 'Jurisprudence' in the National Interest or Symbolic Reassurance?", Alberta Law Review, XI, 2 (1973), pp. 347-353. (The Commission issued two Reports, the first on natural gas and pipe lines, and the second on the Alberta to Montreal oil pipe line.)

[12] Davis sees the part played by the FPC in both the Trans-Canada and Westcoast cases having the same rationale. As he says with reference to Trans-Canada: "Canadian gas . . . has been contracted at a price which takes into account the need to build a supplementary line northward in the Minnesota area from the United States gas fields in Texas. Again, as a result of price setting at the point of entry, some part of the capital charges in this alternative American supply line must be assumed by producers in this country." An implication of both decisions is the reluctance of American authorities to allow sizeable American markets to become wholly dependent upon a foreign source of natural gas. Davis, op. cit., p. 166.

[13] For a full discussion of the Trans-Canada story and of the pipe line debate, see Royal Commission on Energy, First Report, Chapter 4; McDougall, op. cit., pp. 330-4. Miller, op. cit., pp. 111-114; H. G. Thorburn, "Parliament and Policy-Making: The Case of the Trans-Canada Gas Pipeline," Canadian Journal of Economics and Political Science, XXIII, 4 (November, 1957), pp. 516-531; William Kilbourn, Pipeline: Trans-Canada and the Great Debate: A History of Business and Politics (Toronto: Clark, Irwin and Co., 1970). The FPC's consideration of the import from Canada is discussed in detail in H. J. G. Aitken, "The Midwestern Case: Canadian Gas and the Federal Power Commission," Canadian Journal of Economics and Political Science, XXV, 2 (May, 1959), pp. 129-143.

[14] A Gallup Poll of May 1, 1956 (shortly before Howe announced closure on the pipe line bill) is quoted to this effect by Kilbourn: "Nearly 75% of the adult population of the country . . . said they had heard or read of the project. Of those who had an opinion, 45% said they favored a pipe line built and run by private Canadian investment, while 29% favored one 'built by the government'. Only 17% wanted a line 'built partly by the government and partly by private investment in Canada and the United States.' Almost all of those who chose the

first alternative were willing to stick by it even if it meant delay in building the line, two out of three favoring a government pipe line said they were willing to pay higher taxes to get it." Kilbourn, op. cit. p. 113.

[15] The Borden Commission heard submissions from 70 parties and received written submissions from 19 others. By comparison, the submissions heard and received by the NEB in a selection of its more controversial decisions number as follows: March, 1960, 20 heard and 21 received; August, 1970, 35 heard and 34 received; November, 1971, 29 heard and 8 received. Moreover, the Commission received a higher proportion of submissions from non-industrial interests than has generally been the case with the Board. That is, it received submissions or heard testimony from a higher proportion than is usual for the NEB of such parties as municipalities, trade union locals, constituency associations of political parties and individual citizens.

[16] The Order-in-Council which established the Commission is reproduced as Appendix B.

[17] Royal Commission on Energy, Transcripts of Briefs and Statements, I-LX, p. 429 (hereafter referred to as Hearings).

[18] Ibid., p. 271.

[19] Ibid., pp. 2467-2469. The city's submission also advocated reserve fields for municipal use, p. 2476.

[20] Ibid., pp. 3129, 3143 and 3137.

[21] Ibid., p. 6751.

[22] Ibid., pp. 3622 and 3655.

[23] Foreign and foreign controlled companies are denoted as such in Appendix C, which lists all parties who made submissions to the Commission.

[24] Hearings, p. 902 (C.P.A.); pp. 942-944 (Westcoast); p. 4473 (Shell). The C.P.A. reported there was some difference in views among its members on the principle of affording protection to Canadian markets before allowing exports (p. 919). Imperial stated that the industry could develop logically if Canada and the United States were regarded as a single market (p. 4684).

[25] Canadian Western Natural Gas and Northwestern Utilities. Ibid., pp. 646 and 674.

[26] Ibid., pp. 1109 and 1114 (Westcoast); p. 720 (Canadian Western and Northern Utilities). A joint submission by several independent producers headed by Amurex Oil Company (some of which were American controlled and some of which were not) also rejected the proposal to ear-mark reserves (p. 2814).

[27] I could find no producing or exporting company who opposed this principle, although I cannot attest that every such company endorsed it explicitly.

[28] *Hearings*, pp. 7164 and 7195.

[29] *First Report*, List of Specific Recommendations.

[30] *Ibid*., Chapter 1, Section A, Part I, Comment #4 (emphasis added).

[31] *Ibid*.

[32] *Ibid*., Comments #3 and #4.

[33] *Ibid*., List of Specific Recommendations.

[34] *Ibid*., Chapter 1, Section A, Part II, Comment #1.

[35] See, for example, *First Report*, Comment #2.

[36] *Ibid*., Comment #3.

[37] *Ibid*., Comment #6; List of Recommendations #4.

[38] Quoted by the Commission in *First Report*, Comment #10.

[39] *Ibid*.

[40] Compare *First Report*, List of Recommendations, #'s 11, 12, 15, 16 and 19.

[41] *Ibid*., #21(a) (ii).

[42] *Ibid*., #21(b).

[43] See Royal Commission on Energy, *Second Report*, Chapter 5.

[44] In support of the proposal, the group submitted that it promised a substantial saving of foreign exchange to Canada, estimated to amount to about one-quarter of Canada's merchandise trade deficit in 1956. The problem of the industry's shut-in capacity was acute, moreover. Actual production as a percentage of potential production in Alberta was 58.7 in 1956, 50.7 in 1957, and 39.2 in 1958 (submission of the Oil and Gas Conservation Board of Alberta to the Royal Commission on Energy, as presented in Table IX of the Commission's *Second Report*). That the decline in Alberta's production is attributable to a decline in export demand is made clear in Chapter 2 of the same report.

[45] *Hearings*, pp. 4124 and 4126. The spokesman seemed to shy away from the idea of a pipe line under public ownership as means of reaching the Montreal market (pp. 4182-4183).

[46] The Commission states in its Second Report that the Company considered its plan to be a sound commercial proposal which "could be financed if appropriate through-put agreements were entered into by the Montreal refiners" (Chapter V). Also, see Hearings, p. 4160.

[47] See Hearings, pp. 4792-4808 (Imperial; pp. 4491-4499 (Shell); p. 5063 (McColl Frontenac); p. 5318 (B.A.); p. 5656 (California Standard); p. 7731 (Sun); pp. 7808-7810 (Petrofina).

[48] Ibid., p. 4920.

[49] Ibid., p. 4287. Also, see Second Report, Chapter 5.

[50] Ibid., p. 4994.

[51] On most of these points, see the citations in Footnote 47 above. Shell indicated it would not voluntarily sign a through-put agreement with the pipe line company (p. 4564); McColl Frontenac said it would not (p. 5123).

[52] Hearings, pp. 5882-5910 (Bailey Selbourne); pp. 5484-5512 (Canadian Oil).

[53] See Second Report, Chapter 6.

[54] See Hearings, pp. 7086-7096.

[55] Second Report, Chapter 6.

[56] Ibid.

[57] Ibid., Recommendation #5.

[58] Ibid., Chapter 6. The Second Report was released about the same time as the NEB was established.

[59] First Report, List of Specific Recommendations, #1.

[60] See Footnote 30 above.

[61] First Report, Chapter 1, Section A, Part II, Comment #3.

CHAPTER IV

THE NATURAL GAS INDUSTRY AND THE NATIONAL ENERGY BOARD, 1960-1971

In 1959 the Canadian Government created the National Energy Board and delegated to it the power to regulate the interprovincial and the international trade of Canadian sources of energy.[1] In effect, therefore, the decisions of the NEB condition the access to markets of Canadian producers of energy and the availability of energy to Canadian and American consumers.

The Board, subject to the approval of the cabinet, regulates the interprovincial movement of natural gas and petroleum through the granting of certificates of public convenience for the construction of pipe lines, and it regulates, again subject to the approval of the cabinet, international trade in oil and natural gas through the granting of certificates of public convenience for the construction of pipe lines as well as through granting licences for the import and export of oil and gas. The Board, however, cannot regulate directly the price at which gas is sold by either producers, pipe lines or distributors. The one exception to this is that the Board's granting of an export licence is subject to its consideration of the price at which the gas is traded "at the border," that is, normally, the price at which gas is traded between an American and a Canadian pipe line company. The Board also has the power, which it has only recently begun to exercise, to regulate the tolls, tariffs and rates of

Canadian pipe line companies.[2]

It is important to bear in mind that a number of important areas of federal responsibility do not come under the Board's jurisdiction, such as the regulation of exploration, drilling and production in federally administered territories. The granting of exploration permits in the Arctic and off-shore regions is carried out by the Department of Indian Affairs and Northern Development and the Department of Energy, Mines and Resources, respectively. These departments, along with those of Justice, the Environment, and Transport, oversee a variety of other matters implicated in the development of petroleum in federal lands.

This chapter examines National Energy Board decisions from 1960 to 1971 on the questions which the Board must decide before approving the export of natural gas or the construction of pipe line facilities for the export of natural gas: the determination of the existence and the size of an exportable surplus of gas, the acceptability of the price provisions of the proposed export, and the acceptability of any pipe line facilities required by the export. As well as to review these decisions of the Board and its justification of them, an attempt is made to indicate the extent and apparent impact of the involvement of particular interests in the making of these decisions.

The present chapter is taken up almost entirely with the public record of the Board's hearings, reports and decisions. In the succeeding chapter, the debates in the House of Commons on many of these same matters are reported, including the debate on the NEB Act itself.

Gas Exports

The two criteria stipulated in the NEB Act for the acceptability of an application for the export of natural gas are, first, that the volumes to be exported are surplus to Canadian requirements and, second, that the price at which the gas is sold at the border is just and reasonable in relation to the public interest.[3] The Board has evolved since its inception a rather elaborate and complex set of procedures according to which these provisions of the Act are given effect. However, stated most simply, this procedure has been, first, to determine the size of an exportable surplus, without reference to the terms of individual export applications, and then, only if there is a surplus to be exported, to consider which particular export proposals shall be accepted or rejected on the grounds of price. In other words, the existence of an exportable surplus is a necessary but not a sufficient condition for the export of gas, whether new facilities have been applied for or not.

Determination of Surplus

The Board is charged with the responsibility to determine whether an exportable surplus of gas exists and, secondly, to decide whether it should be exported. These latter decisions are subject to the final authority of Cabinet. In practice, the first step is all-important, for, as shown below, the Board and the Cabinet have without exception approved exports to the full amount of the exportable surplus which, from time to time, has been determined to exist. Thus, the primary concern of the Board on the question of gas export applications has been to estimate Canadian requirements, existing Canadian reserves, and projected Canadian reserves and to compare figures for requirements with those for reserves to determine the size of the gas surplus available for export, if any.

There is no question that this is a highly technical matter, and no attempt will be made here to assess the accuracy of the Board's estimates. It is not necessary to prove that the Board's estimates have erred in order to demonstrate that the Board's use of data, methods, and formulae in arriving at such estimates is, indeed must be, a matter for political rather than technical resolution. Examples of questions which can only be resolved through political decisions are the span of time over which Canadian requirements are to be estimated; the method of estimating these requirements and taking them into account; the definition of what constitutes available reserves; whether or to what extent future Canadian requirements are to be protected by established reserves only or established reserves plus some portion of future reserves; and the formula for estimating the rate of growth of reserves.

In deciding these questions, the Board has relied on several sources. First, the government of Alberta and its (then) Oil and Gas Conservation Board has provided the National Energy Board with several operating principles and formulae. Second, the Royal Commission on Energy established several procedures, formulae and precedents in grappling with similar issues. Thirdly, over the years, firms in the petroleum and pipe line industries have individually, or collectively through their trade associations, made significant contributions to these procedures, of which several examples will be reviewed later in this chapter.[4]

The NEB has provided a clear summary statement of its original procedures for determining the size of an exportable surplus of gas:

> In its report to the Governor-in-Council of March, 1960, the Board, for purposes of estimating Canadian gas requirements to be supplied from established reserves, included all of the Alberta requirements as these would grow throughout the period to 31 December 1980 and, for the balance of Canada, took the requirements as they would grow for the first four years and levelled them at that rate for the balance of the period. With respect to future surplus, the Board considered future reserves as these were anticipated to grow during thirty years and compared this value with the anticipated growth of all Canadian requirements throughout the thirty-year period.[5]

The elements of this procedure, therefore, consisted of the following five estimated quantities: established reserves; Canadian gas requirements for a twenty-one-year period; total Canadian gas requirements for the next thirty years; expected rate of growth of reserves; and total reserves available in the thirtieth year.

Notice that these estimates were utilized in two separate comparisons of supply and demand. The first is a comparison of available supply with a twenty-one-year projection of demand. The second is a comparison of available plus projected supply with a thirty-year projection of demand.[6] In effect, therefore, the protection of Canadian requirements afforded by established reserves was for a twenty-one-year period. Beyond this period, protection of Canadian requirements was allowed to depend upon anticipated growth of reserves. Also included in the future surplus calculation (that is, also to be met from future reserves rather than currently established reserves) were the incremental Canadian requirements beyond the fourth year of the twenty-one-year protection period. This was spelled out clearly in the 1960 report of the Board:

> The requirements elsewhere (than Alberta) in Canada have been levelled off at the 1963 rate for the balance of the 21-year period. According to the evidence filed before the Board, in general it has not been practicable for pipe line companies to obtain contracts for the purchase or sale of gas for incremental requirements commencing more than three or four years in the future. Incremental requirements beyond the 1963 level accordingly have been allocated to future discoveries of gas (future reserves). In every case, all requirements accruing after 1980 are assumed to be met from future reserves.[7]

In effect, therefore, the requirements protected by established reserves were those currently under contract, plus the growth in requirements which appeared likely to come under contract during four years from the present. Even during the twenty-one-year protection period, incremental requirements beyond the fourth year were to be met by future growth in reserves; and, of course, all projected requirements in the period between the twenty-first and the thirtieth years were to be met from future reserves.

The significance of these points concerning the allocation of Canadian requirements between established and future reserves is that this allocation determines the extent to which Canadian requirements depend for protection upon the future growth of reserves, that is, on the rate of exploration for and development of gas reserves. Since, as is demonstrated above, some part of the protection for Canadian requirements depends upon the future development of reserves (or on 'trend gas' as such future reserves are often called) an important consideration is the factors which determine the rate of growth of reserves and, hence, the amount of trend gas available to meet future requirements. The Board addresses this point in a 1965 Report as follows:

> Data in the Alberta Board report indicate that, on an average, 410 exploratory wells have been drilled in Alberta over the past 12 years. The Board believes that this average rate can be maintained during the next 20 years provided the incentives for exploring and drilling are maintained at levels comparable to those experienced during the past decade.[8]

An important component of these incentives is the size of the market for natural gas, which in turn is largely dependent upon the amount of gas exported from Canada to the United States.

Speaking analytically, it is possible to conclude from the concepts and methods employed by the Board that the protection of Canadian gas requirements depends upon the maintenance and perhaps even the expansion of the prevailing rate of gas exports. The extent to which this possibility has been realized in fact will be discussed presently.

In its Annual Report for 1969, the Board related its deliberations on applications from a number of firms for gas exports totalling 9.5 Tcf. A hearing to consider these applications had commenced in November 1969. Prior to the opening of this hearing, the Board, in the words of the Annual Report,

> decided that it must, in view of the amount of gas proposed to be exported, re-examine the principles on which it has previously considered such matters as Canadian gas requirements; indicated gas reserves, deliverability and projected trends in rates of discovery; and the surplus remaining after making due allowance for the reasonably foreseeable requirements for gas use in Canada. . . . The Board invited evidence and advice from all other interested parties on these and related questions.[9]

In the following review of the advice received by the Board and of its subsequent decisions, points relating to the allocation of Canadian requirements between established and future reserves, and to the conditions conducive to the growth of reserves, are emphasized. The Board made two procedural changes involving these points. It abandoned the future surplus calculation, and it altered its operational definition of supply.

The source of the Board's new policy concerning the determination of surplus is clear and acknowledged by the Board: "In respect of the future surplus calculation, the Board has decided to adopt a method similar to that recommended by Alberta and Southern which is based on a repetition of the current surplus calculation at intervals in the future."[10]

Alberta and Southern (which, as described below, is not only foreign controlled but is an integral part of an international enterprise engaged in the purchase, transmission and distribution of natural gas) had argued for its recommended method on two grounds. One was the alleged unreliability of long-term forecasts.[11] The other was the adverse consequence it attributed to the over-protection of Canadian requirements, which it claimed would result if the Board declined to alter its current procedures:

> It seems to us that at this point in time we see such a huge ultimate reserve of natural gas in Canada with the industry still in its early stages of development and still requiring incentives, that is, markets, that there is danger in repressing the development of production by showing too much concern based on a future surplus figure.[12]

Alberta and Southern's recommendation is justified, therefore, in terms of growing markets and expanded production. The alternative procedure it proposed was a "projected surplus" which involved "simply repeating the current surplus calculation as it would be done at a series of future points in time up to 10 years in the future."[13] This is the formulation adopted by the Board, with the single modification of extending the projection to 20 years.[14]

During the hearings, the question of the Board's calculation of surplus received attention from a variety of interested parties, and the terms in which they addressed this question leaves no doubt that what they perceived to be at stake was the degree of protection of supply afforded Canadian markets or, conversely, the amount of gas available for export. For example, the Canadian Petroleum Association, which speaks for the Canadian affiliates of the major international oil companies, stressed as a very important consideration "that current and future surplus be calculated in such a manner as will minimize to the greatest degree possible the risk of contractable reserves having to be set aside in excess of those volumes of gas for which the purchasers of Canadian requirements are actually prepared to contract for [sic]."[15] The CPA also suggested that the projection of current requirements beyond a ten-year period cannot "reasonably meet the test of foreseeability as required under section 83 of the Act," and recommended several changes in the method of calculating supply aimed at enlarging the supply estimate.[16]

The Independent Petroleum Association of Canada, which speaks by and large for petroleum companies which (although in most cases foreign owned) are independent of the major international oil companies and large American-based oil companies, stated its agreement

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with the idea "that we now have sufficient information about the potential of Canada to justify a liberalization of the formula for determination of surplus."[17] Specifically, the IPAC recommended the Board take into account fifty per cent of the reserves then classed as beyond economic reach, "and include in that category as discoveries are made the initial estimates of probable reserves for new discoveries."[18] There was, in addition, almost complete unanimity on these points among producers who dealt with them in individual submissions, such as Gulf, Shell, Amoco, Amereda Hess, and Mobil, all of whom are foreign controlled firms.[19] The one exception was Canadian Fina, who expressed support for the current criteria and method of calculating surplus.[20]

Opposition to changes in the Board's established procedures and support for a conservative attitude on exports was voiced most strongly by Canadian distributors and consumers of natural gas, that is, B.C. Hydro, Northern and Central, Gaz Metropolitaine, Consumers' Gas, and Union Gas.[21] They were joined in this opposition by all of the provincial governments represented, except Alberta. Of the four exporting companies, Trans-Canada and Westcoast, who unlike Alberta and Southern serve Canadian as well as American markets, did suggest some changes in methods, but generally argued for a conservative approach to determination of surplus.[22]

It was argued by some of these parties that the proposed departures from established procedures would have the effect of freeing volumes of gas for export which had hitherto been reserved for the protection of Canadian markets and increasing the dependence

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of Canadian consumers on future and more costly supplies. It was, for example, Quebec's view that

> there is no need to accept the suggestion made to include all or part of the reserves beyond economic reach or those deferred for conservation purposes in order to establish available reserves. In fact, these reserves, whether proven or not, are not available to the market, and their inclusion in available reserves could only increase artificially, to the detriment of the Canadian consumer, the surplus for export purposes.[23]

These sentiments echoed those of Ontario, and both provinces pointed out that only by revising its formula for determining surplus could the Board grant all the exports sought.[24] The danger which most of the opponents saw in doing so was well expressed by B.C. Hydro: "We are opposed to any policy of committing all known reserves to the support of export contracts, as this would mean that Canadian customers would be called upon to pay a disproportionate share of future discovery and development costs."[25]

The clear concern of all these parties was to protect Canadian markets in terms of the price and availability of gas, in the face of rapidly increasing demand in American markets. Their general insistance was that this protection be afforded, so far as feasible, out of established reserves; their general fear was that protection of supply would be allowed to depend too heavily upon future discoveries at higher prices. None argued that gas would be unavailable in the future in the sense that the required gas was not there or could not be developed, but they did argue that it could only be made available at price levels which they would find harmful. They opposed a liberalization of the surplus calculation because to do so would be to increase the amount of established reserves committed to export markets, which in turn would make future Canadian requirements more dependent upon trend gas. The danger they saw in this was that a condition of trend gas, of the future discovery and development of reserves, was higher gas prices.

Those advocating changes in the Board's methods presented in a different light the relationship between exports, Canadian requirements and future reserves. According to these parties, the best protection for future Canadian requirements is an expanding industry and the best assurance of an expanding industry is a rapidly expanding market, that is, a rising rate of exports. As the spokesman for Amoco put it, "new discoveries to be made afford to the Canadian consumer the best possible protection for his future gas needs."[26] However, it was argued that these new discoveries will accrue at a rate reflecting the incentive available in the form of rapidly expanding markets, which comes down to exports. To quote Dome: "If the export of gas in Canada is discouraged or restrained, we run the risk the vast potential resource of the Canadian north will never be utilized and will therefore be lost to the Canadian consumer."[27]

This basic argument that future Canadian requirements are better protected by liberal than by conservative export policies and that, consequently, the Board should alter its current practices, was repeated by the CPA, the IPAC, Amoco, Banff, Amareda Hess, Dome, Shell, and Mobil.[28] (Canadian Fina adduced the same argument, but in a context other than that of the surplus calculation.)[29] In addition to these producers and producers' associations, the argument was advanced by Alberta and Southern, and by the Government of

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Alberta.[30] Many of these submissions admitted that their argument entailed both the development of northern and/or off-shore reserves of gas and higher well-head prices. To cite Amoco as an illustration, the company pointed out that the cost of exploration and production in the more remote areas of Canada "is extremely high" and that, as a result

> it will be necessary to establish higher gas prices as well as other economic incentives to the benefit of gas producers. Unless such incentives are made available, it will be extremely difficult for the producers to justify the acceleration of drilling programs to the extent necessary to fulfill the indicated rapidly growing future market requirements.[31]

One of the virtues of an expanding rate of exports, according to producers, is the upward pressure they would exert on well-head prices, thus facilitating and encouraging expansion of the industry.

The producers' submissions that increasing exports are a necessary condition for expansion are particularly important if future Canadian requirements are dependent upon the development of remote and considerably more costly gas reserves; if these premises are correct, the Board would be forced to provide for future Canadian requirements not by denying export applications, but by approving them. If Canadian access to future supply is thus dependent upon the producers' access to increased American markets, then Canadian consumers must pay the higher prices of remote reserves or go without gas in the future.

This study will not attempt to assess the degree of truth in these propositions. However, the Board itself recognized their force and expressed a concern to avoid the potential harm to the interests of Canadian consumers they might entail. For instance, in announcing that it was prepared to shorten the normal term of new export licences, the Board discussed these points as follows:

> This general approach would have the merit of diminishing in some degree the force of the argument, advanced by some Canadian distribution companies and some provinces, that the granting of export licences for long terms, with full protection as to supply, tends to dedicate an undue proportion of presently available reserves to export markets, leaving Canadian requirements beyond the relatively short term to be met out of gas yet to be discovered, and probably to come at higher cost from more remote areas. If . . . increments of export throughput were licenced for relatively short terms, United States and Canadian customers would share more equitably in whatever may be the costs of future increments of supply to be committed to Canadian and export markets.[32]

Moreover, the possibility that future Canadian requirements must depend for protection upon the expansion of the industry is apparently real to the Board:

> The distribution companies will not be adequately serving their own interests and those of their customers if they fail to contribute their share to the incentive for that increased rate of discovery which is essential if the Canadian gas producing industry is to continue to develop. They cannot safely assume that the limitation of exports will by itself ensure that adequate supplies are available at reasonable prices.[33]

These two statements by the Board may seem to have taken the discussion some distance from the specific question of the formula and procedures for determining whether a surplus of gas is available for export. That, however, is precisely the point. The apparently technical problem of making and utilizing such estimates as Canadian requirements, Canadian reserves, and trends in discovery, is inextricable from the political question of how to distribute the various costs and benefits associated with bringing Canadian gas to Canadian and American markets. It is in this sense that the Board is a political, policy-making body in acting as a regulative, implementing body. Moreover, as I have attempted to show above, the submissions by parties interested in the Board's decisions consistently press for solutions to the technical questions which will promote or protect their advantage in the distribution of costs and benefits inherent in the decision; and for this reason the NEB's surplus calculation constitutes the focus of politics, or at least a large part of the politics of natural gas exports.

Export Price

Any discussion of the Board's procedures for deciding to approve the price provisions of a particular application for the export of gas will be complicated by the lack of consistency on the part of the Board in applying its own criteria. The difference between the Board's enunciation of criteria and general principles and its application of these to individual cases is nowhere greater than it is with respect to price. Nevertheless, some light at the end of this tunnel of complexity may be available in the form of the Board's own concise definition of three "tests" which it has explicitly attempted, since 1967, to apply to the pricing provisions of a proposed export.

The tests were originally given precise and formal definition in the course of the Board's consideration of an application for export by Westcoast Transmission in 1967, although each test has been applied at one time or another to particular decisions taken since

1960. By August, 1970, the Board had apparently decided to apply these three tests generally to all the applications before it at the time:

> Section 83(b) of the National Energy Board Act requires that the Board must satisfy itself that the price to be charged by an applicant for gas to be exported by him is just and reasonable in relation to the public interest.
>
> While it must have regard to all considerations that appear to it to be relevant, the Board considers it appropriate under existing circumstances to apply to the cases now before it, mutatis mutandis, the criteria set forth in its 1967 decision.[34]

The Board then repeated its elaboration of the three tests, as follows:

> (1) the export price must recover its appropriate share of the costs incurred;
>
> (2) the export price should, under normal circumstances, not be less than the price to Canadians for similar deliveries in the same area; and
>
> (3) the export price of gas should not result in prices in the United States market area materially less than the least cost alternative for energy from indigenous sources.

However, the application of these tests to the various export applications has varied considerably, as described below, and has evinced a desire on the part of the Board to allow exceptions more often than to apply a rule. Thus, the discussion of the Board's application of its criteria with respect to price is not amenable to generalized treatment. It is better recounted in the context of a discussion of the four individual export complexes. (An analysis and review of the entire record of the Board's decisions in these matters is part of the concluding chapter to this study.)

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Alberta and Southern and Alberta Natural Gas

Both of these companies are Canadian subsidiaries of the Pacific Gas and Electric Company of San Francisco (P.G. and E.), which distributes gas in California. Alberta and Southern is wholly owned by P.G. and E., while Alberta Natural is controlled by Pacific Gas Transmission Company, which is in turn controlled by P.G. and E. Alberta and Southern purchases gas from various producers and has the gas transported to the Alberta-British Columbia boundary by Alberta Gas Trunk Line. The gas is transported from there to the international boundary at Kingsgate, B.C., by Alberta Natural and sold to Pacific Gas Transmission, as authorized by licences issued by the National Energy Board. From here it is carried by Pacific Gas Transmission to California where it is finally sold to P.G. and E. With respect to this aspect of its operations, Alberta and Southern is clearly a Canadian component of a vertically integrated, foreign controlled corporation, as is Alberta Natural. (The other aspect of Alberta and Southern's operation, the sale of gas to Canadian-Montana, will be reviewed shortly.)

Three striking features of the Alberta and Southern project are first, that it is the largest single export of gas from Canada; second, that this export is made on essentially a cost of service basis; and third, the Alberta Southern project serves only American markets.[35] Thus, it constitutes an interesting instance of the type of parent-subsidiary relationship analyzed earlier in Chapter II. It also provides a case of an attempt, largely unsuccessful, to prevent through government regulation practices on the part of a foreign controlled corporation which benefit its parent or its home country at the expense of the host country. It will be shown below that the Alberta and Southern project has been permitted by Canadian authorities to export a large portion (thirty to forty per cent) of Canadian exports of natural gas and, for that matter, a large portion (fifteen to twenty per cent) of Canadian production of natural gas, at prices which for several years have been below their full value. Moreover, because of the fact that the company is an exporter exclusively, there can be no allowance made on the basis of sharing capital costs between export service and Canadian service in the manner claimed to be the case with Westcoast Transmission.

In reviewing Alberta and Southern's first application for export, the Board noted that the gas "would be paid for, not on a fixed price basis, but on a cost of service basis."[36] It further noted "the absence of sales in Canada, or in areas of the United States close to the point of export, of such a nature that a comparison of prices can usefully be made."[37] It noted finally that it was "satisfied on the evidence before it that P.G. and E's estimate of the delivered cost of Canadian gas at Antioch would represent adequate valuation of that gas under present circumstances."[38] On these grounds, the Board declared the price just and reasonable in relation to the public interest and approved the export.

In 1965, when Alberta and Southern was making a second application for export, doubts were raised by Westcoast Transmission whether one of the conditions of the initial export--that the imported gas received its full value in the market in which it was ultimately

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sold--still obtained for the second export.[39] Alberta and Southern, on the other hand, contended that the export should be permitted provided only that a fair price was received at the well-head for the resource and that transportation charges to the border were reasonable.[40] The Board's conclusion on these points, in approving the application, was as follows:

> Insofar as price is concerned, Alberta and Southern would obtain the gas to be exported as a result of arms length bargaining with various producers in Alberta. The sale price at the international border consists of this basic cost of the gas to which are added Alberta and Southern's cost, with a return of 7 1/2%, as well as all costs of transportation computed on a cost of service basis.[41]

By 1967, the Board was applying the following three tests to Alberta and Southern's third application for export: the prices of Canadian distributors compared favourably with the price of the proposed export (a comparison which had heretofore been deemed inappropriate), the purchase cost of the gas to Alberta and Southern was the result of arms-length bargaining with Alberta producers, and the cost of service provisions automatically assured a 7 1/2 per cent return on facilities.[42] Significantly, the criterion applied to the 1965 and 1967 applications, that the cost of gas to Alberta and Southern was established through arms-length bargaining with producers, coincided with the neglect of the consideration that the gas reach a fair value in the market served.

By August 1970, in consideration of a fourth application for gas export, the Board found that, in fact, the price at which Alberta and Southern proposed to sell gas would result in prices in the California market which were significantly lower than the least cost alternative for energy in that market.[43] Since the Board recognized that the application had met the other two tests with respect to price--full recovery ~~of~~ costs incurred and favourable comparison with prices to Canadian customers in the same area in which the export takes place--its decision regarding price would turn on satisfaction of the third test.[44]

While the Board was willing to concede the difficulty in being precise about the failure of the application to meet this test, it did not hesitate either to declare this failure or to spell out the consequence of this failure:

> From its analysis [The Board] considers that there is in the present circumstances some gaps, even though it cannot be readily identified, between the cost of Canadian gas delivered under present contractual arrangements and the cost of the lowest cost alternative energy from indigenous sources. This gap, or cost of cost of service, represents a subsidy by Canada to the United States consumers of the gas.[45]

Given this assessment, it is interesting to note the grounds on which the Board ultimately ruled in favour of the application, since in doing so it was necessarily appealing to principles and criteria which overrode the three tests it had previously established for the acceptability of pricing provisions of a proposed export.

First, the Board stated that it

> accepted that there is considerable force in the logic by which the applicant sought to demonstrate that the Board's 'third test' . . . is not usefully applicable to an export based on cost of service, but that the justness and reasonableness of the export price in such a case must be adjudged in the light of evolution of prices over the history and foreseeable future of the project.[46]

Second, the Board pointed out that there was no easy solution to the price deficiency, since an attempt by the Board to insist on a higher

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price at the border would have implications

> so intricate that the Board has abandoned the idea on grounds of practicality and some doubt as to equity; would possibly disrupt sales arrangements already made with producers and defer producers' realization on their investment in deliverable gas; and, finally, would leave the needs of the California market for gas unsatisfied at a time when gas supply was a very grave concern for that area;

and concluded that, "these results would obviously be unpalatable to all concerned."[47] Thirdly,

> the Alberta-California project, in which Alberta and Southern is the exporting entity, has made a very significant contribution to the development of the natural gas industry in Western Canada, and in the course of building up its highly efficient and wholly reputable enterprise has hitherto paid more for Canadian gas than it need have paid for gas from United States sources.[48]

Fourth,

> The Board is of the view that it would be inconsistent with the amity and comity which has come to characterize relations between the United States and Canada in respect of trade in natural gas to withhold approval of the last 18 to 20 per cent of the optimum through-put of the transmission system because of doubt that the price for the last increment will reflect its full opportunity cost in the California market.[49]

Fifth, "no intervenor opposed the application and many supported it."[50]

None of these factors was cited in terms which suggest that they were considerations which the Board felt are of general validity or applicability. Rather they were presented in the report very much as particular circumstances which justified the neglect of general principles previously established. These principles, it may be noted, had the form of refinements on the Board's notion of the Canadian public interest. The Board seemed to be aware that in approving the price provisions of this application it had stretched the limits of

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acceptability under its own stipulated definition of the public interest; for it proceeded immediately from approval of this application to the warning that Alberta and Southern and its affiliated companies should "examine alternative pricing methods with a view to establishing one more readily reconcilable with the public interest of Canada."[51] One can imagine Alberta and Southern and its affiliated companies finding this an onerous charge, given the difficulty of knowing from the Board's own statements and actions precisely what that public interest is.

Canadian Montana

Canadian Montana purchases gas from Alberta and Southern and exports this gas to its parent company, the Montana Power Company, for final sale in markets served by the latter in Montana. The gas is purchased by Alberta and Southern from producers and is transmitted by Alberta Gas Trunk to a point in southwestern Alberta, where it enters the pipe line of Canadian-Montana (a pipe line four miles in length and of sixteen inches diameter) for delivery to Montana Power at the international boundary near Cardston, Alberta.

The project is a continuation of the first significant export of gas from Alberta to the United States. This first sale was undertaken during the Korean War at the behest of the American military and the Canadian Department of Defence to meet emergency gas requirements of non-ferrous metal industries in Montana.[52] The exports under this project, like those of the exports to Vermont and New York through Niagara, are regarded as special markets by the Board, in that the areas concerned are isolated and the volumes exported are only a small proportion of total Canadian exports. Nevertheless, like the Niagara exports, they seem to carry for the Board the conscious commitment to supply incremental requirements.[53]

Canadian-Montana has, from the beginning, sold gas to Montana Power on a cost-of-service basis. In its consideration of the first application to the NEB from Canadian-Montana, the NEB stated: "As in the case of Westcoast and Alberta and Southern, there is no sale in a contiguous area of Canada by which the adequacy of the border price is to be established on the basis of cost of service."[54] Thus, this export was permitted on the basis of satisfying only one of the three tests formally stipulated later by the Board, namely, the full recovery of costs incurred in the export venture, including at least a 7 1/2 per cent return on capital.

No attempt was made with respect to this application to determine the cost of alternative sources of energy in the export market. This latter test, however, was applied to a second application submitted a short time later by Canadian-Montana, where the border price of 15.42 cents in 1960 was found to compare favourably with the price at which Montana Power purchased gas from another supplier of gas in Warren, Montana (14.55 cents).[55] In arriving at this decision, the Board found it was still unable to apply a test with respect to the price of gas to Canadian consumers in a contiguous area because, while the applicant had such customers, the sales were retail sales and, therefore, "under the jurisdiction of the appropriate Alberta authorities, rates for such sales are not properly comparable with border price."[56] Nevertheless, the Board did add that all the

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Canadian customers of Canadian-Montana have given evidence that the Company "has given us good service at reasonable rates."[57]

In a 1967 decision, the Board rendered a favourable decision on price based simply on grounds that the cost of service assured an adequate return and that the purchase of gas, conducted by Alberta and Southern for later sale to Canadian-Montana, was at arms-length.[58] In an August 1970 decision, the Board justified approval of the price provisions in an application submitted by Canadian-Montana on the basis of full recovery of costs (the first test) and a favourable comparison of the border price with the cost of alternative sources of energy in the market served (the third test). The second test was declared inapplicable because there were no Canadian customers to whom sales could be made.[59] However, perhaps because of the prominence given to the problems of cost of service pricing with respect to Alberta and Southern's application, the Board seemed to feel that it needed to provide a further justification for finding the border price to be just and reasonable, "notwithstanding the Board's reservations as to the cost of service pricing method."[60] The Board followed this conclusion immediately with this statement:

> The underlying thought here is that Canada has for many years supplied the incremental gas requirements of Montana. . . . So long as Canada is prepared to export gas for California markets on a cost of service basis, it would be unreasonable to refuse to allow a small fraction of that export stream to go to Montana on the same basis, as a sort of 'border accommodation,' that is, the provision of service to an area contiguous to the Canada-United States border which cannot be economically provided with adequate service from the sources in the country in which the area in question is a part.[61]

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Trans-Canada Pipe Lines

Trans-Canada transmits gas from the Alberta-Saskatchewan border to Canadian markets in Saskatchewan, Manitoba, Ontario and Quebec and to American markets through Emerson, Manitoba, Niagara Falls, Ontario and Philipsburg, Quebec. The main transmission line, carrying sixty-five per cent of Trans-Canada's total through-put, is located entirely within Canada, and the remaining through-put is exported at Emerson for sale in the United States or for transmission to Eastern Canadian markets via Great Lakes Transmission Company, an American corporation of which Trans-Canada maintains part ownership.

Trans-Canada emerged in its present form as a result of an amalgamation in 1954 of two companies with rival proposals for marketing Alberta's natural gas, of which one had applied to Alberta to supply gas to Eastern Canada and the other had applied for supplies to service markets in Canada as far east as Winnipeg and then to export to the United States from Manitoba. The present Trans-Canada system is in fact a merger of the two schemes.[62]

In considering Trans-Canada's first export applications to the NEB, one through Emerson and the other through Niagara Falls, the Board stated that

> one test that may be applied is for the Board to be satisfied that the export price is fair in relation to the prices charged to Canadian distributors in the area adjacent to the point of export, with due allowance being made for variations in the terms and conditions of sale.[63]

This the Board proceeded to do with respect to the Emerson export, and found that, if they saw fit to do so, distributors in Manitoba could "buy gas under the existing Manitoba zone sale schedule at a

90 per cent load factor and acquire it at a lower price than that to be paid at Emerson on a 95 per cent load factor."[64]

Finding this satisfactory, the Board went on to compare the cost of service arising from the proposed Emerson export with the average cost of service for its Canadian markets and also to compare the respective rates of return. The Board decided on the basis of this evidence that, since the rate of return on the Emerson sale would be substantially higher than on the Canadian sales, the proposed export "would enhance the average rate of return on the sales of the system."[65]

Finally, the Board also noted that there was evidence to indicate that "in the general area in which the gas exported at Emerson would be sold, the delivered cost of the Canadian gas is greater than that of gas now being received from other sources."[66] On the basis of these various tests, the Board found the export price just and reasonable in relation to the public interest.

In considering the Niagara Falls export by Trans-Canada, the Board found these tests more difficult to apply.[67] The export was approved, however, after some adjustment to the export price. (The Niagara application is reviewed more fully below, in connection with the Board's decisions on pipe line applications.)[68]

In 1965, the Board concluded that the export price provided for in an application by Trans-Canada was acceptable on the grounds that the price was the result of arms-length negotiations between Trans-Canada and the American importer and, further, that the prices to be paid for the export were higher than those to which a Manitoba

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distributor would be required to pay for similar service.[69]

In 1970, with reference to the three tests formally stipulated in its 1967 Westcoast decisions, the Board was satisfied, first, "that the price in the sales contracts compares favorably with a comparable regulated Manitoba Zone Rate, which includes recovery of costs. . . ."[70] The Board noted, second, that the price schedule covering the gas to be exported was the result of arms-length bargaining and, further, that

> the initial price in the proposed gas sales contracts for exports at Emerson, Manitoba is 112.5 per cent of the most recent regulated Manitoba Zone Rate. . . . In addition, the contracts contain a floor price of 105 per cent of the comparable Manitoba Zone Rate calculated on the basis of 92.5 cents United States equals $1.00 Canadian.[71]

The Board found these conditions to meet the second test provided the contracts could be amended such that the freeing of the Canadian dollar would not result in a renunciation in the prospective value of the floor price provision. Third, the Board considered at some length the price of the gas exported through Emerson at several of its ultimate market areas (i.e., the border price plus the cost of transportation from Emerson to each market area) in comparison with both the competitive cost of gas from alternative sources of supply and competitive fuel costs.[72] Finding these comparisons favourable, the Board declared the third test to be met and approved Emerson export application.[73]

With respect to the Niagara Falls export, the Board did not refer to the three tests as such. It did say in drawing its conclusions on border price that a higher priority service was being provided to Canadian customers in the adjacent zone rate and at a lower price than that provided to the importer and, further, that the applicant would recover more than his costs from the proposed sale.[74] There is no reference in these concluding remarks on export price to the price of alternative supplies of gas to the importer or to the price of alternative fuels. However, in an earlier section of the Report, evidence is provided that the gas to be sold to Tennessee "would displace gas which would otherwise be provided from the South," and, further, the price previously in effect in the same market area is given.[75] Why this evidence is not drawn on by the Board to provide a basis for the third test is left unexplained.

Westcoast Transmission Company

Westcoast transmits gas out of Northeastern British Columbia and a small area in the Peace River district of Alberta for export sales to the United States at Huntington, British Columbia and for domestic sales in British Columbia. The exported gas is sold to El Paso Natural Gas Company for resale to distributors in the Pacific Northwest of the United States.

The degree to which Westcoast can be properly regarded as a foreign controlled company is a matter of some doubt. It has been suggested that (for the period under review) a majority of its shares are held by foreigners. However, it is not clear whether this ownership is held closely by a single, dominant company which could then properly be considered its parent. Rather, it appears as though its major supplier is affiliated with one of its large shareholders

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(Pacific Petroleum and Phillips Petroleum, respectively) and that its only export customer (El Paso) is also a large shareholder.[76]

The Westcoast project, like that of Trans-Canada, had the dubious distinction of becoming implicated in the political confusion reported earlier surrounding the pipe line debate of 1956 and in the sweeping investigations of the Borden Commission, which were instigated in 1958 by a new Conservative administration.[77] In addition, the history of the company's appearances before the NEB, particularly with respect to the export price provisions of its applications, is unquestionably the most confused and technically demanding of the stories one can pursue through the reports of the Board. The Board itself has remarked on this: "Westcoast has shown a unique flair for making complicated applications, and for complicating them still further by amending them."[78]

Westcoast was incorporated in 1949 with the objective of moving gas from northeastern British Columbia and northwestern Alberta into Vancouver, into interior British Columbia near the border with the United States, and into the States of Washington, Oregon and Idaho. It appeared that the demand in British Columbia alone was insufficient to secure the company economies of scale and, hence, a competitive position with other fuels in its prospective markets. Thus, exports were seen to be essential to the enterprise. However, the FPC rejected the imports to the United States initially proposed by Westcoast and, when approval was finally obtained from the FPC, the border price of the gas was very low, lower than the price charged by the company to Canadian consumers. The Canadian government, again prior to the creation of the NEB, approved this export, in the hope that later gas exports would improve the situation for Canadian consumers. The Board's experience with Westcoast, however, indicates that this improvement has been difficult to achieve.[79]

The first export application to the Board from Westcoast had, in fact, nothing to do with the major export system described above, but rather with a secondary system in which Westcoast moves gas from Southwestern Alberta through the facilities of Alberta Natural for delivery to an export point at Kingsgate, British Columbia. With respect to this sale, which is not involved in the major and contentious export at Huntington, the Board limited its concern over price to ensuring that the cost of service was met by the border price. There were no comparable sales contracted for in Canada, and it was "difficult if not impossible," to compare the price of Canadian gas with alternative sources of gas in the American market it served.[80] The prices were found to be acceptable.

In 1966, Westcoast instigated the first attempt to rectify the adverse terms of its gas sale to El Paso at Huntington, which was authorized by a licence issued in 1955. Based on a new contract between El Paso and Westcoast (the "1966 Agreement"), Westcoast applied for an export licence which, in effect, provided for the termination of the original licence based on the first contract (the 1954 Agreement). The 1954 Agreement and the corresponding export licence issued in 1955 by the Canadian government had provided for, roughly speaking, an export of 300,000 Mcf per day at twenty-two cents (U.S.) per Mcf. This licence would have expired in 1977. Westcoast's new application would have extended this sale of 300,000 Mcf per day plus an additional 200,000 Mcf per day to 1991, but under a new pricing arrangement in which the combined total of 500,000 Mcf per day would all be sold at a price of twenty-seven cents (U.S.) per Mcf.

This application was supported with reservations by several intervenors, principally Inland Natural Gas and Cominco, who argued that the price of gas to Canadian customers of Westcoast had been substantially higher than the prevailing export price to El Paso and that the latter price had actually been less than Westcoast's total cost, including a reasonable rate of return, of delivering gas to the border.[81] However, during the course of the hearing, Westcoast met these objections by settling a new agreement with Inland and the reservations expressed were withdrawn.[82]

The Board subsequently compared the prices to El Paso with those to B.C. Hydro and Inland as an average over the twenty-five year life of contracts, and found that, for instance, at a seventy-two per cent load factor Inland would pay an average of 32.188 cents per Mcf and El Paso would pay 33.349 cents per Mcf. Thus,

> the Board observes that comparison of Canadian and export prices, at similar load factors, produces an approximate equality over the period of the new El Paso contract but only by virtue of the escalation clause therein.[83]

In other words, the margin of difference between Canadian and export average prices was very slim. Nevertheless, on the basis of this and other evidence, the Board found the export price acceptable, and issued an export licence based on the 1966 Agreement, conditional on the Board's also approving the effective date of the new agreement,

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which was in turn contingent on El Paso receiving FPC approval to import gas under the terms of the 1966 Agreement.

However, the FPC in fact denied the El Paso application. In particular, the FPC denied any rewriting of the terms of the 1954 Agreement, and approved only the import of the incremental volume of 200,000 Mcf per day at a price level not in excess of 29.5 cents (U.S.) per Mcf. Correspondingly, Westcoast filed an application with the Board later in 1967 for, substantially, the authorization to export 200,000 Mcf per day on the terms set out in the FPC decision. In support of this application, a new contract between Westcoast and El Paso was submitted and termed the "Amendatory Agreement".

The Board's decision on the application based on the Amendatory Agreement comprises the most detailed and exhaustive review of an export price arrangement ever to come before it. This decision is, for one thing, the first explicit enunciation and operationalization of the three tests of border price.[84] While the Board necessarily moved in its discussion from statements of general principle to the examination of the peculiarities of the Westcoast application, the following account will be limited to considerations of general applicability which the Board introduced at this time.

First, with respect to the recovery of costs incurred in provision of the export service, the Board took the company to task at some length over its statements of total costs and its allocation of costs between domestic and export service.[85] This discussion of costs culminated in a question regarding the adequacy of Westcoast's rate of return, which the Board tentatively suggested might be too low. The Board felt, further, that "this problem is complicated by the fact that the rate of return on the combined present and projected sales to El Paso is lower than the rate of return resulting from sales to Canadian distributors."[86] In answer to an objection from Westcoast that a low rate of return on export sales was of concern only to the shareholders of the company, the Board declared as follows: "Clearly, it is not possible to isolate the effects of an investment producing a sub-normal return from the Company as a whole and the effect must flow through to the costs of financing and thus to Canadian costs."[87] As a final point on cost of service, the Board also challenged the company's low rate of depreciation charged on its principal assets:

> Such rates will leave a substantial portion of the facilities applicable to export sales undepreciated at the expiry of the export licences, a fact which the Board considers as contributing to the risk of the company so that, if the depreciation rates on the export facilities are not matched to the terms of the export licences, the range of return considered to be just and reasonable should be somewhat higher than would otherwise be deemed necessary.[88]

Second, in comparing Canadian and United States prices, the Board simply noted the evidence submitted and compared the terms of Canadian sales with those of the border price under two sets of circumstances: first, the border price of the incremental volumes applied for under the terms of the Amendatory Agreement and, second, the price resulting when the incremental volumes applied for under that agreement were "rolled in" with volumes sold under the 1954 Agreement. Canadian prices were lower than the price of the incremental export volume of 202,300 Mcf per day but higher than the rolled in price of the combined export volume of 505,750 Mcf per day.[89]

Third, with respect to the cost of alternative gas supplies in the market served by the exports, the Board reiterated its general view that the price of exports "should normally not be lower than may be necessary to enable the gas to compete effectively in the market area."[90] On the basis of the results of a study conducted by the Board, it concluded that the difference between the delivered costs of the incremental volumes of Westcoast gas and the delivered cost of the same incremental volume from the importers alternative source was at least 4.4 cents (U.S.) per Mcf in favour of Westcoast gas. It is worth emphasizing that the failure of the border price to meet the third test was a failure of the price of the Amendatory Agreement only and had nothing to do with the price resulting when the Amendatory Agreement and the lower-priced 1954 Agreement were combined.

Thus, with respect to the first two tests of border price, the price of the incremental volumes alone was adequate but the price when rolled in with the 1954 export was deficient; when subjected to the third test, the price of even the incremental export was deficient.[91] Even though the Board, in view of the recent FPC ruling on the earlier proposal to import from Canada, had already given up on the prospect of rectifying the terms of the 1954 Agreement in Canada's favour and had decided instead "to concentrate its attention upon the proposed incremental export under the Amendatory Agreement," it could not accept the terms of that agreement.[92] The Board's objection was that the price would permit Canadian gas to enter the American market at a cost less than gas available from indigenous sources.

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> The difference, some 4.5 cents/Mcf., appears to the Board to be material. It is some 14 per cent of the proposed export price, more than $8,100 per day under the Amendatory Agreement operating at a 90 per cent load factor, or, for the total amount of gas for which a licence is sought, over $68 millions.[93]

The Board, however, conceded that "some special circumstance may justify a departure from the principle that the export price of gas should fairly reflect its value in the market area to be served."[94] It then argued that no exception should be made in this case, for which position it seemed to offer two arguments.

The principal argument was that the FPC had, in its Opinion 526, ruled out both periodic price escalations and price renegotiations during the term of the contract. A second concern was that the price provision suggested by the FPC in Opinion 526, which formed the basis of the application before the Board, were claimed by the FPC to be "in line with comparable Canadian sales."[95] These conditions the Board was very loath to accept, partly because of fears that increasing costs of service would not be recovered by price escalations but also because the Board did not wish to accept the principle of "in-line" pricing in relation to gas exports.

The principle that the price of exports from Canada should be in line with the price of comparable sales in Canada, the Board pointed out, denies in principle that the price of Canadian gas should bear a reasonable relationship to the value of the gas in the market served: "The in-line principle makes the Canadian floor price the United States ceiling price."[96] A consequence of this would be that a Canadian exporter could justify increasing the export price only by increasing his prices to Canadian customers. The Board evidently feared that approval of the application would be to accept, by implication, the "in line" pricing theory as an appropriate test by which the United States would judge the border price of Canadian imports. The Board issued an order to dismiss the application.

Shortly after this decision, the Board received yet another application from Westcoast with yet another price provision which, in effect, split the difference between the prices contained in its last two applications:

> El Paso and Westcoast in their most recent agreement, mindful of the findings of the FPC and this Board, have negotiated a price approximately midway between the prices previously put forward by the companies but rejected by one or the other of the respective national agencies.[97]

By the Board's own reckoning on the preceding application, which was quoted above, this proposal must therefore have entailed an undervaluation of some forty million dollars over the life of the contract, or of some seven per cent of the actual border price. In spite of this, and in spite of objections from Trans-Canada and B.C. Hydro, the Board decided that "in the circumstances of this case, the price bears a reasonable relationship to the least cost alternative for the Pacific Northwest for energy from indigenous sources." The Board went on to say this:

> Even if there remained a doubt that the third test as to border price had been met, the Board would be inclined to consider that, in the circumstances which have evolved, such doubt should be overweighed by general considerations of the public interest in bringing about a constructive end to a difficult matter.
>
> It is strengthened in arriving at its opinion by the views expressed by the Federal Power Commission in its order of 16 January 1968.[98]

The Board supported this easing of its hard stand on prices in terms of, first, its desire to respond positively to "a constructive initiative toward reconciliation" taken earlier by the FPC and, second, the Board's own previous cooperative conduct and principles of conciliation for which the Board had been commended by the FPC. In this connection, the Board recalled a statement which it had made in its December 1967 decision in support of an action it took to grant a temporary licence for a six-month export of gas in spite of its rejection of the application as a whole. The Board quoted the words it used on that occasion in justification of the decision under review here:

> The furthest thing from the Board's mind in reaching this decision is to cause any hardship to users of gas in the Pacific Northwest. Any such effect would be regrettable on grounds both of international comity and of Canadian interest in continuing to participate in the development of the Pacific Northwestern gas market.[99]

The Board's decision of February 1968 to approve the application was taken as a continuous application of these principles.

Westcoast returned to the Board in 1970 with yet another proposal which, in the customary fashion of Westcoast, included provisions for new exports combined with provisions for the extension of old exports, all at a bewildering variety of possible prices, rolled in and otherwise. Put crudely, but as simply as possible, Westcoast was seeking two licences for export at the same time: first, a licence ("Licence A") to export additional gas from November 1970 through October 1990 to a total incremental volume of up to 75,863 Mcf per day; and, second, a licence ("Combined Licence") to export gas at a maximum daily rate of 733,338 Mcf for one year commencing 1 November

1971 and, thereafter, at a maximum daily rate of 809,200 Mcf per day from November 1972 through October 1989. The effective date of this "Combined Licence" would be simultaneous with the cancellation of all previous licences for export at Huntington, including "Licence A". The Board summarized the content of the applications as follows:

> The Licence A proposal would simply provide export of gas additional to that already licenced. The second proposal would provide for two further increments of gas, but would provide the sum of the quantities previously licenced, plus the increments, for a period of twelve years past the expiry date of Licence C 1955-958 and one year past the expiry date of Licence GL-23, but for one year less than the proposed life of Licence A. This 'rolled-in supply' would be priced much above the price under PC 1955-958, the so-called 22 cent price, above that in effect under Licence GL-23, and above the average of these and the price under Licence A.[100]

The Board further found that these prices under the proposed "Combined Licence" met all three of its tests, as far as conditions at the present time were concerned.[101] However, in accordance with objections raised by Inland, the Board held serious reservations about the fact

> that if all existing export licences were to be consolidated as contemplated in the Fourth Service Agreement, Westcoast's export revenue, which constitutes a large part of its total revenue, would be predetermined and not subject to review over the next 19 years. Any deficiency in the return to which the Company might be entitled would have to be made up by Canadian customers since, if the [application] were unconditionally approved, Westcoast would be free to ask the Board to increase rates to Canadian customers, but unable to alter the export price.[102]

The Board's answer to this objection was to approve the application on the condition its price provisions be amended such that "those prices would never result in an export price in Canadian currency less than 105 per cent of the comparable price to Canadian customers in the area of British Columbia contiguous to the point of export of gas to El Paso."[103]

Construction of Oil and Natural Gas Pipe Lines

All pipe lines under the Board's jurisdiction, whether they are to service export or Canadian markets or both, must receive from the NEB a certificate declaring: "The Board is satisfied that the line is and will be required by the present and future public convenience and necessity."[104] The Board's discretion in determining what factors are to be taken into account in granting or refusing such a certificate in any individual case is practically unlimited:

> The Board shall take into account all such matters as to it appear to be relevant, and without limiting the generality of the foregoing, the Board may have regard to the following: . . . (e) any public interest that in the Board's opinion may be affected by the granting or refusing of the application.[105]

The other considerations listed include the availability of supply, the existence of actual or potential markets, the economic feasibility of the pipe line, and

> the financial responsibility and financial structure of the applicant, the methods of financing the line, and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the line.

Niagara Gas Transmission

The first major elaboration of these provisions of the Act occurred in the course of a decision by the Board in March 1960. This decision concerned an application by Niagara Gas Transmission for a certificate of public convenience and necessity approving the construction of a pipe line for export service. In deciding this matter, the Board both elaborated its interpretation of a provision set out in the Act and also gave thorough and explicit consideration to several other matters not specifically stated in the Act.

Niagara proposed to purchase gas from Trans-Canada, transmit the gas to the international boundary, and there to sell it to St. Lawrence Natural Gas Company in New York State. As noted in the previous discussion of Trans-Canada's export application, this proposal was denied initially on the basis of the price Niagara was to receive at the international border, which the Board found to be inadequate because it would fail to return to Niagara the full cost of its service:

> The terms of the contract should ensure full recovery of Niagara Gas transmission costs during the second ten years but during the first ten years. . . a 5 per cent depreciation rate would appear to result in Niagara Gas failing to be reimbursed for the company's transmission costs during that period by a considerable margin. . . . The Board believes the border price should represent Niagara Gas's purchase cost of gas plus a cost of service charge which would allow depreciation of the export facilities to be fully recovered during the term of the export licence plus a fair rate of return on capital invested.[106]

In considering a revised application, the Board noted that it stipulated a cost of service provision to include operation and maintenance charges on the line, depreciation on the facilities at five per cent per annum on a straight line basis, taxes on the line, plus a per annum return on net investment of base (after depreciation) of seven and a half per cent after taxes on income.[107]

In addition to elaborating precisely on the concept of cost of service, the Board also considered two other matters raised in connection with the Niagara application which are not expressed in the Act: the question of a Canadian supplier being the sole source of supply for an export market and the question of the effect of gas exports from Canada on the competitive industrial position of the importing region.

As Niagara was to become the sole source of supply for the region to be served by St. Lawrence Natural Gas, the Board expressed the fear that approval of the export

> either would imply acceptance of some responsibility to supply, within a short period and thereafter, additional gas to meet the load growth of the area, or else would imply a rather casual view by the Board of the responsibilities of Canada in commencing a strictly limited supply of gas to a wholly dependent export market.[108]

The Board added that neither implication was acceptable to it. In spite of this strong expression of reluctance to do so, the Board ultimately approved the application, with the justification that "it would be generally consistent with Canadian-United States relations to allow the export of gas to small communities lying adjacent to the international boundaries. . . ."[109] The Board, however, disavowed explicitly any implication of future commitments to supply additional volumes of gas to the region.[110]

The Board further considered the implications contained in Niagara's proposal "to import gas to an area of the United States adjacent to important industrial centres in Canada. . . ."[111] In its consideration of this question, the Board noted that gas was available to adjacent regions of Ontario on terms at least as favourable as those St. Lawrence would offer to its customers in St. Lawrence

County. It also reported having received an assurance from an Ontario Deputy Minister who had considered the matter and concluded that there was no evidence competitive industry would be moving into St. Lawrence County on this account to the detriment of Ontario industry. Apparently, these considerations were sufficient to overcome the initial reservations of the Board on this question, as the application was eventually approved. At no point in these deliberations did the Board indicate that it had considered the use of Canada's natural gas to provide a competitive advantage to Canadian industry. It appeared rather to be concerned to ensure that the imports did not create an advantage for industry in the United States.

Matador Pipe Line

A second early and major refinement on the terms of the NEB Act with respect to the construction of pipe lines occurred later in 1960. This decision, while it involved an application for the construction of an oil pipe line, led the Board to considerations which could readily be applied to any pipe line proposal. The application, by the Matador Pipe Line Company, was for the construction of the facilities necessary to transport oil, delivered to the applicant at the international border by an affiliated company in North Dakota, from the border to the interprovincial pipe line in Canada. Thus, the Matador project was intended to be part of a system designed to carry North Dakota oil into American markets already served by Alberta crude oil, via interprovincial.

Several considerations arose out of the characteristics of this proposal. First, the Board was aware that

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> the effects of successful completion and operation of the project must include some increase in the competitive strength of North Dakota oil in relation to Canadian oil in the markets both reach, either in quantity or in price or in both.[112]

Any possible objection on these grounds was removed from the Board's mind on the basis that no Canadian producer, shipper, or refiner of oil raised objections during the proceedings and the Province of Alberta submitted a letter stating it would make no objections.[113]

The second consideration was raised by an intervention in the proceedings by the Soo Line Railroad Company, which was engaged in carrying oil from North Dakota to Minneapolis-St. Paul. In what the Board commended as a "skillful and learned argument," Soo contended that the Matador application showed no evidence of being "required by Canadian public convenience and necessity," thus raising a question as to the meaning of those words as they appear in Section 44 of the NEB Act.[114] The Board here cited two Canadian precedents in support of the following stipulation of the meaning of the quoted words in the Act:

> The Board therefore takes the view that in exercising its function of forming an opinion as to what is required by the public convenience and necessity, it cannot interpret the phrase in the sense of meaning essential or indispensable. . . . It appears that the phrase must be interpreted in a sense more closely akin to 'desirable from the standpoint of the public interest'.[115]

However, the Soo Line had also contended that "the question which Parliament has delegated to this Board is, does the Canadian economy require this pipe line as a pipe line in connection with the transportation needs and necessities of this country?," and submitted further that "it is not this Board's function to decide whether or not an application for a pipe line should be granted by reason of its overall effect in connection with Canada's economy and international relations."[116]

The Board took the Soo argument to be "that the Board could certificate a pipe line which is to transport oil and gas for Canadian needs only."[117] The Board rejected this definition of its responsibilities as being too narrow, and stated that the Board rather should take into account

> the possible general effects upon Canadian oil production, marketing and transportation which in its opinion might arise from denying or approving this application even though the consideration of these effects necessarily involves some examination of circumstances beyond the borders of Canada.[118]

In particular, the Board noted the Canadian government's declaration of a National Oil Policy and its desire to expand export sales which meant, in effect, gaining access to the United States market and, in turn, maintaining an exemption from American import regulations. Thus, the Board stated that it must consider whether rejection of the Matador application would not threaten the success of the National Oil Policy to the extent that its success depended upon American cooperation.[119] In conclusion, the Board stated as follows:

> Rejection of this application would ill accord with the attitude which has been taken by responsible authorities in the United States to the construction of Canadian-owned pipe line facilities in the United States, the carriage through the United States of Canadian oil in Bond, and the access of Canadian oil to markets in the United States.[120]

This, in combination with the lack of Canadian objections noted earlier, seems to have been decisive grounds for the Board. The application was approved.

Great Lakes

The principles of cooperation and the economics of interdependence in petroleum marketing were raised again in a different way--indeed, in an obverse way--in 1966 by the Great Lakes project. This project was reviewed by the Board in the form of an application to export and re-import approximately six Tcf of gas and to export 765 Bcf over twenty-five years. The point at issue was whether Trans-Canada would be permitted to transport natural gas from Alberta to Central Canada via the United States.

As the Board itself was clearly aware, the character of this project was such as to call into question policies established during the course of earlier government decisions with respect to the original Trans-Canada system.[121] The construction of gas pipe lines through the United States has always appeared to have economic advantages in terms of costs, construction, time, financing and other factors, but disadvantages with respect to the loss by Canadian authorities of unlimited and exclusive jurisdiction over the entire Trans-Canada system. Thus, for instance, the Board expressed reservations concerning the Great Lakes project, particularly with respect to future expansion of the Trans-Canada-Great Lakes system, which the Board felt would require a degree of cooperation between authorities in the two countries that might not be entirely realistic. Thus, approval had to rest on the assumption

> that the regulatory agencies of both countries will always move in the same direction and within a short time of one another in dealing with interrelated applications by Trans-Canada in Canada and by Great Lakes in the United States. . . . This is a very large assumption and not to be taken for granted.[122]

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Nevertheless, the Board after deliberating on these and numerous other factors, apparently felt that these drawbacks to the scheme were overridden by economic constraints and were softened by both a sufficient degree of confidence in the continuing goodwill of American authorities and the mutual benefits to be derived from the necessary integration of the North American petroleum economy.

> The 'amity and comity' in relations between the two countries in respect of gas, to which reference has been made in Federal Power Commission decisions, is real and highly valued by this Board. For its part, the Board . . . . believes the growing interdependence of the two countries in terms of energy is mutually beneficial and can be made more so if its development is carefully reconciled at each stage with the national interests of the participating countries.[123]

The application was approved by the Board. Following an initial reluctance by Cabinet and some hurried negotiations among the industry, the applicants, the Board and the Cabinet, the Cabinet also approved the project with the proviso that a fixed percentage of Trans-Canada's total through-put to Eastern Canada be carried via the Northern Ontario route.[124] Initially, this percentage was fixed at fifty and was eventually to reach and remain at sixty-five.

Two of the decisions reported above (Matador and Great Lakes) reveal some of the principles and assumptions on which the Board bases its judgements with respect to the construction of pipe lines. These considerations are within the powers of the Board to make, but they are additional to those spelled out specifically in the NEB Act. They may be summarized as follows: First, no pipe line, whether to facilitate gas exports or otherwise, should be denied on the basis that it does not appear to be essential or indispensable to Canada, but only if it is demonstrably not "desirable from the standpoint of the public interest." Moreover, in determining the desirability of the line, the Board ought to consider all the effects of a denial, even though the consideration of these effects necessarily involves some examination of circumstances beyond the borders of Canada. Second, the principles of 'amity and comity' between the United States and Canada, first enunciated by the FPC, ought to govern so far as possible the relations on energy matters between the two countries, as should the general recognition that their growing interdependence in energy matters is mutually beneficial.

Consolidated

A much more recent decision led the Board to still other considerations which it felt necessary to take into account in deciding on an application for a new export venture. In its report of August, 1970, the NEB considered applications from Consolidated Pipe Lines Company and Consolidated Natural Gas Limited "Consolidated" to construct new pipe line facilities for the export of gas from Canada and for the construction of additional facilities to transmit gas from a gas field in Montana to the main Canadian line for eventual sale in the United States.[125]

The volume of Canadian gas which was involved in the application totalled approximately 1.5 Tcf over the life of the proposed export. As an application for gas exports through an entirely new pipe line in Canada, a close review of the Board's considerations and findings with respect to the Consolidated project would seem necessary and worthwhile from the standpoint of this study. However, the potential significance of the application in providing a clear indication of the Board's applied principles and criteria is mitigated by the conditions under which the application was reviewed, namely, an exportable surplus in Canada insufficient to meet the total demand constituted by all the export applications before the Board. However, in particular, as this discussion will reveal, it is difficult to know whether the Board ultimately based its rejection of this plan on the basis of a shortage in gas supply or on the basis of a failure to meet the Board's standards regarding export prices. Given that an exportable surplus of some size did exist, the Consolidated project could not be automatically rejected on the grounds that no gas was available to the Company, and the Board was required to treat the application as one of several competing for export licences. Moreover, a large number of interested parties intervened in the Consolidated application, which provides a picture of the configuration of interests on the export question in a context other than that of the estimation of an exportable surplus. For this reason, the present discussion will focus primarily on the Board's review of Consolidated's price provisions and on the submissions made in favour of and against the project.[126]

With respect to the export price provisions, the Board was satisfied as to its first test, in that the cost of service provisions in the contract between Consolidated and Northern Natural makes automatic the recovery of the cost of gas and the cost of transmission.[127] The Board found no satisfactory basis for applying the second test, whether the export price is not less than the price to Canadians for similar deliveries in the same area, since there were no such Canadian deliveries proposed. In comparing the export price with Trans-Canada's prices in Saskatchewan and Manitoba, however, the Board observed that the initial level of proposed export price was higher than the price to Canadians but that, at a proposed level in the future, the export price could be lower than the price Canadians pay for comparable service. With respect to the third test, the Board expressed reservations that once the proposed project attained an optimum level of operation, Northern Natural might be in a position to deliver Canadian gas to its United States customers at a cost substantially less than their least cost alternative for energy from indigenous sources and, moreover, at a cost less than the prices charged by other companies supplying the same United States market area with Canadian gas purchased from Trans-Canada at Emerson.

The Board also noted that, even though the delivered cost of Canadian gas at the initial level of export was clearly above the prices based on rates now charged for gas from Northern Natural's traditional supply areas, it was also significant that similar additional volumes of gas would not be forthcoming from United States sources at these prices. In relation to the cost alternative fuels in the market served, however, the initial level of operation was found to be unacceptable.

In providing reasons for its decision in the Consolidated case, the Board stated the following principle on the basis of its conclusions with respect to price:

> The discussion of the Alberta and Southern application illustrated the difficulty of finding that the price to

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> be charged for gas to be exported is just and reasonable in the case of a cost of service project which is reaching optimum operating levels particularly when it does so in a period of fairly general and rapid increase in energy prices. The finding required by the Act has not been readily reached in respect of the current application by Alberta and Southern, and the Board would be reluctant to approve the commencement of another like project in which the same or greater difficulties are already discernible.[128]

The Board, however, was not prepared to declare the prices unjust and unreasonable in relation to the public interest, even though it could declare that "the cost of service concept makes it unlikely that Canada would receive the full value of gas exported in the later stages of development of such a system."[129] In fact, the Board's reasons for denying the Consolidated application cannot be known precisely; for the Board referred to problems arising out of a number of circumstances, the most important of which was the fact that it had already determined that the surplus of gas available for export was inadequate to meet the total volume of exports applied for by the various companies.

Hence, the rejection of the Consolidated application was not, according to the Board's expressed reasons for its decision, a direct consequence of inadequacies of the proposal taken by itself; rejection was rather a consequence of inadequacies which prompted the Board, in effect, to give the Consolidated project the lowest priority among conflicting demands from various applicants on the limited resources available.

The Board set down its priorities as follows: first

> where a choice has to be made between licencing exports by a project wholly oriented to export and a project which serves Canadian customers, if all other factors were equal

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> the choice would have to be in favor of the project serving Canadian as well as export customers;

and, second,

> when a choice has to be made between licencing additional quantities of gas for an existing project which has not hitherto been developed to optimum capacity, and licencing a new project of otherwise comparable merit, the Board considers that it is consistent with the avoidance of misallocation of resources . . . to make the choice in favor of the existing system, assuming of course that its proposal meets all relevant requirements.[130]

In conclusion, the Board declared:

> In the present circumstances where surplus is not adequate to support all the applications before the Board, nor the whole of the applications of already established transmission systems, the establishment of a new transmission project oriented wholly to export, founded on a cost of service concept, and so designed that its future development would almost inevitably result in decreasing border prices in a period when such gas as may become surplus to Canadian requirements will be increasingly valuable, would not appear to the Board to serve the public interest of Canada.[131]

Given all of this reasoning, it is somewhat surprising that, in denying the application for export, the Board cited the ground of inadequate surplus:

> For the reasons given, the Board is of the opinion that the quantity of gas sought to be exported does, in fact, exceed the surplus remaining after having made due allowance for the reasonably foreseeable requirements for use in Canada and having regard to the trends in the discovery of gas in Canada.[132]

In other words, at a purely formal level, the Board denied Consolidated's application under Section 83 (a) of the Act rather than Section 83 (b). This unfortunately leaves the observer in some ignorance as to whether the Board, on the question of price alone, would have granted the application under conditions of an adequate exportable surplus.

A notable feature of the Consolidated case was the number of parties taking positions for or against the project in their submissions to the Board. As indicated earlier, it is relatively rare for large numbers of interested parties to submit positions with respect to the export applications of particular companies or to any matters considered by the Board other than its determination of an exportable surplus of natural gas. Judging from the submissions received by the Board on the question of the Consolidated application, the major point of contention among the parties in this case had to do with the desirability of the entry of a new and large export venture under the condition of an anticipated shortage of exportable volumes of gas. The issue, therefore, reveals the positions advocated by various parties on the question of gas exports in a context other than that of the determination of surplus.

In the majority of cases, the interested parties related their stance on Consolidated to their attitude on the proper role of the NEB with respect to export prices. It was generally accepted as given that approval of the Consolidated project and the concomitant expansion of gas exports would lead directly to greater competition among transmission companies for gas supplies and thereby to higher well-head prices. Those parties who supported the Consolidated application welcomed this prospect, while those who opposed it did not. This divergence corresponded with another on the questions as to whether the Board ought to concern itself at all with the potential effects of gas exports on the price of gas to Canadians and how the Board ought to ensure just and reasonable prices for exported gas.

A clear illustration of how these various questions were seen to be tightly interrelated is to be found in the submission of the CPA. The Association insisted that the Board must continue to recognize as a

> very important consideration . . . the encouragement of the greatest possible degree of competition in the buying and selling of gas at the well-head which, we submit, will not only be the best assurance that the export price for surplus gas at the border will be just and reasonable in the public interest, but in addition that it will be an export price which will be defensible to foreign consumers since it will maximize the returns to producers and thereby serve as an incentive to the discovery and development of new sources of supply, a matter of considerable concern to those consumers.[133]

The CPA deduces its support for the Consolidated application from this principle. The Association further resisted any more active intervention on the part of the Board in export matters:

> It would be most unfortunate if the Board implemented restrictive regulatory policies such as those advocated by certain of the Intervenors which might well be interpreted by potential investors in Canada's gas and associated industries as a trend toward economic nationalism.[134]

The substance of the CPA's position was urged on the Board by all the producers who addressed the issue.[135] Further support was forthcoming from the Government of Alberta, who stated simply that they supported all applicants and opposed anyone who opposed any applicant.[136] On the question of the Board's intervention in the conditions of allowable exports, the Alberta spokesman confessed that he was tempted to sum up with the three words, "Leave us alone."[137] Alberta took the position that arms-length bargaining was the surest guarantee of acceptable prices, and perhaps the only one, since to obtain an opportunity price was seen to be impossible.[138] Finally, "there is no authority in this Board to concern itself with gas price in Canada."[139]

A few of the parties did separate the question of Consolidated's application from the broader questions of the conditions which should be attached to exports. For example, the Saskatchewan Power Corporation was in favour of the Consolidated export provided several conditions could be met. Among these conditions were that the Board regularly review and amend as necessary the price provisions in export contracts, exercise a concern that the export of gas did not adversely affect the location of industry in Canada, and took steps to ensure that the return obtained from the exports would remain in and benefit Canada.[140]

Conversely, Alberta and Southern, while it did not oppose Consolidated outright, suggested a principle which under current conditions was likely to lead, and apparently did lead, to the denial of the project, namely, that preference among competitors for given volumes of exportable gas should go to those systems in existence serving export markets. On other questions, however, the company was in broad agreement with the positions taken by the CPA, and expressly rejected the suggestion by some others that there be periodic re-examination by the Board of the provisions of export contracts.[141]

Numerous parties were in direct opposition to the Consolidated proposal. These parties tended to stress the implication of the scheme in terms of Canadian prices, which were seen to rise inevitably in consequence of increased competition for gas supplies. Two major

Canadian distributors of natural gas in Ontario, Union Gas and Consumers' Gas, added to this consideration on prices the concern that, since Consolidated would be serving the same export market as Trans-Canada, it would threaten the savings accruing to Canadian customers of Trans-Canada as a result of that company's sharing costs between its Canadian and export service.[142] On the same basis, several parties (Trans-Canada, Westcoast, Northern and Central, the Province of Manitoba, the Province of Ontario, and Province of Quebec) submitted that the NEB should give priority to transmission companies serving both Canadian and export markets in allocating exportable surpluses of gas among applicants, and all were opposed to the Consolidated proposal.[143]

All of these parties were joined by several others (B.C. Hydro, Inland, Gaz Metropolitaine) in supporting more active consideration by the Board of the prices at which gas was being exported including particularly the effect of exports on Canadian prices.[144] More specifically, several emphasized that the Board should insist on gas exports obtaining opportunity prices in the American market they served. Still others advocated floor prices be attached to cost of service contracts and periodic reviews of export contracts be undertaken.[145]

It is difficult to conclude who among this array of interested parties won the agreement of the NEB. The Consolidated application failed, but as indicated above its main consideration was the apparent shortage of exportable volumes of gas. Nevertheless, the decision in this case clearly ran counter to the unanimously professed preferences of the producers. With regard to other matters, though, the principle of granting priority to exporters with Canadian markets, as discussed below, was not applied; and the export prices of other projects approved at the same time continued to meet only the first two of the Board's tests.

A Summary and Review of Board Decisions

It should be clear from the above account of decisions by the NEB that, particularly with respect to the price of exported gas, the Board has not sustained a high level of consistency in the application of criteria to various applications. In this section of the paper, I shall highlight the major inconsistencies, discuss the conditions which have resulted from these decisions, and attempt to infer from the resulting conditions the priorities and objectives which move the Board to act as it does.

A systematic review of the decisions taken by the Board and its use of criteria in considering the acceptability of various export proposals seems to reveal neither consistency nor clarity. Taken as a whole, the record reveals that, once it has determined on other grounds that an exportable surplus exists, the Board does not feel very strongly constrained by other provisions of the Act, particularly those respecting the export price. The Board throughout its history has rejected only three export applications. Two of these were rejected on the basis of slight inadequacies in price which were amended and approved shortly thereafter. The third was rejected on

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the basis of conditions involving both price and supply, and it is difficult to say with reference to what precise standard in each case the application would have fallen. This latter case (the case of Consolidated, discussed above) is particularly significant for this reason.

Prior to 1970, the Board decided on export and pipe line applications under conditions of a relative abundance of natural gas. That is, the Board had been able to find an exportable surplus to exist which exceeded the quantities of gas for which export applications had been made to it, according to the prevailing procedures for the determination of surplus. The Board took its 1970 decision under conditions of relative scarcity, that is, an exportable surplus existed but was insufficient to meet the total quantities required to satisfy all the applicants. Hence, the Board had finally to choose among various applicants.

As related in the above section, the Board did state clearly its order of preference among several types of export ventures when it denied the application by Consolidated. Therefore, the record of past decisions of the Board concerning export and pipe line applications can reasonably be examined for answers to two questions: Has the Board established and consistently applied any minimum criteria (necessary conditions) for the approval of individual applications when there is no constraint with respect to exportable surplus? Did the Board establish and consistently apply any standard for discriminating among different types of export and pipe line proposals?

In attempting to answer the second question posed above, I will refer first to the order of preference set out by the Board in justifying its denial of Consolidated. The Board said, first, that a project serving Canadian as well as export markets is preferable, other things being equal, to one serving export markets exclusively (principle A); and, second, that providing incremental volumes of gas to an existing project which can thereby reach optimum capacity is prefereable to providing volumes of gas to a new project (principle B). Given the concrete choice facing the Board, the choice between the major existing systems and the Consolidated proposal, it seems reasonable to conclude that Consolidated lost to Trans-Canada and Westcoast on the basis of principle A and lost to Alberta and Southern on the basis of principle B. Thus, under conditions of a 2.5 Tcf deficiency in exportable surplus compared to the total volumes applied for by all applicants, Consolidated's application for some 1.5 Tcf was denied. However, this left a deficiency of 1 Tcf in relation to the remaining applications. Given that Trans-Canada and Westcoast serve both Canadian and export markets and given also that the Alberta and Southern system, like the Consolidated proposal, is virtually without Canadian customers, it is important to note how the remaining applications are trimmed to fit the exportable surplus available.

Facing the need to trim the applications before it of some 1 Tcf, the Board, in effect, had to choose between Alberta and Southern, Trans-Canada and Westcoast. The former serves only an export market, while the latter two jointly serve Canadian and export markets. On the basis of the Board's enunciated priorities, one might have expected the Board to favour Westcoast and Trans-Canada at the expense of Alberta and Southern, since it had put itself on record as favouring this type of project. Nevertheless, the Board reduced the applications of Alberta and Southern and Trans-Canada by almost equivalent amounts, that is, by approximately .5 Tcf. Westcoast's application was approved without alteration with respect to volume.[146] The Board gave no rationale for its failure to apply these considerations to the remaining exports.

It is difficult to conclude from this evidence that the Board has effectively applied its stated preference for projects serving both Canadian and export markets over those serving only export markets. This is particularly significant in light of the fact that one of the principal justifications used by the Board or by the government in support of large exports of natural gas is the opportunity they provide, by means of the economies of scale available to the combined pipe line facilities, for service to Canadians at lower cost than would otherwise be the case. This justification is used quite explicitly in the particular case of Westcoast Transmission[147] and has been given general enunciation by the NEB as well:

> The carrying of export gas should be a profitable activity, which, when undertaken by transmission systems serving Canadian customers, should make available to such customers a share in the economies of scale and such benefit as may arise from the contribution of exports to the financial health of the transmission system.[148]

This principle conceivably could be applied to any export proposal as a necessary condition of approval, but it seems even more useful as a means of determining the comparative merits of rival applications when available reserves are too small to satisfy all applicants. It is worth noting that, logically, the principle of

Canadian benefit from exports is denied by two types of circumstances: any export project which serves no Canadian customers; and any combined export-Canadian project which leaves Canadian customers bearing a disproportionate share of the costs of providing the combined service. One can only conclude from the decisions taken by the NEB with respect to the alternatives before it in August, 1970, that the Board was not prepared (or, at any rate, observably failed) to favour a combined project such as Trans-Canada over an "export-only" project such as Alberta and Southern in its allocation of scarce exportable reserves, and failed in this way to apply its own stated principles of long-standing. The full insufficiency of 1 Tcf, according to these long-standing principles, should have been shaved from the Alberta and Southern application, allowing Trans-Canada the full volumes for which it had applied. The conclusion must be that the Board has no stated principles which it has consistently applied in distinguishing the relative merits of competing applications under conditions of scarcity, save, perhaps, the preference for existing systems over proposed new systems.

With respect to measuring the individual merits of applications under conditions of relative abundance of reserves, the Board's record is not much clearer. Several principles, elaborated above, have been consistently stated by the NEB with respect to the necessary border price provisions of individual applications. In practice, however, the Board has insisted on only the full recovery by an export of its cost of service, and even here the special circumstances of the Westcoast project throughout the period under review seriously undermined even this "necessary" condition.

The most neglected of the three tests of the border price, however, is the opportunity price provision, that is, the test requiring that the Canadian gas realize something approximating its full value in the market served. Not only has this been true throughout the history of the Board, but in its August 1970 decision the Board allocated the full 5.8 Tcf of exportable gas available without a single cubic foot being absolutely required to meet this provision. Indeed, in the case of Alberta and Southern, the Board eschewed this test quite consciously and deliberately. The other two major exports appeared to meet the third test under current conditions; but the future prices of the exports were tied, not to price changes in the American market served, but to price changes in the Canadian markets adjacent to the point of export. Thus, if it is accurate to say, as the Board itself has said, that the cost of service establishes the floor of the export price, while the competition from alternative sources of gas and energy establishes its ceiling,[149] it is also true to say that the Board has tied the price of the exports it has most recently approved to the floor rather than to the ceiling.

As the NEB was prepared to concede with respect to Alberta and Southern's application, in future the value of Canadian gas in the American markets it serves can quite reasonably be expected to rise and perhaps rise sharply over the life of the export licences. In this event, however, it is not only cost of service contracts which, as with Alberta and Southern, will fail to realize border prices which recover the value of Canadian gas at the international boundary;

border prices which are tied to the adjacent Canadian market will presumably also fail to ensure the recovery of full value. The only certain means of avoiding this, of course, is to raise prices in the adjacent Canadian markets in parallel with the prices in the associated United States market. Interestingly enough, this would be to accept in fact, if not in principle, the "in line" pricing method which the Board explicitly rejected (on exactly these grounds) in its December 1967 decision.

By accepting the principle that the border price must not be less than 105 per cent of the price in the adjacent Canadian market, while failing at the same time to insist on the third test throughout the life of the export, the Board is accepting that the border price will be set in line with the Canadian price plus five per cent. The Board may be pleased enough when the border price actually exceeds this figure. There is, however, absolutely no evidence that it is prepared to insist on a higher price in the event of rapid increases in price in the American markets over the life of the licence.

There is, indeed, no evidence that the NEB regards recovery of the full value of Canadian gas in the market served as a necessary condition for the export of gas to the United States. The only reasonable interpretation of this is that the Board is anxious, wherever possible, to maximize the volume of exports of gas to the United States but does not care to maximize the return to Canada of those sales. Some might regard this as a curious stance for a regulatory agency with a mandate to serve the Canadian public interest to adopt. Nevertheless, the NEB, with the concurrence of Canadian governments, has declared this policy to be in the Canadian public interest.

In the concluding chapter to this study (Chapter VI), an attempt will be made to understand how and why this is so, in the light of considerations introduced in the first two chapters. Before that task is undertaken, however, this study reviews in the next chapter what members of parliament have said and done during the same period concerning matters decided by the NEB. It is the primary purpose of such a review to determine whether the representatives of the Canadian public have held and argued for a view of the Canadian public interest in these matters which differs substantially from that of the regulatory officials or the private interests already examined.

NOTES TO CHAPTER IV

[1] *NEB Act*.

[2] For a detailed discussion of the *NEB Act* and the functions and powers of the Board, see R. C. Carter, "The National Energy Board of Canada and the American Administrative Procedure Act--a Comparative Study," *Saskatchewan Law Review*, XXXIV, 2 (Summer, 1969), pp. 110-113; B. D. Fisher, "The Role of the National Energy Board in Controlling the Export of Natural Gas from Canada," *Osgood Hall Law Journal*, IX, 3 (December, 1971), pp. 560-564; and McDougall, *op. cit.*, pp. 338-346. The Board consists of seven members (a Chairman, a Vice-Chairman and five members-at-large) appointed by the Governor-in-Council for terms of seven years subject to good behaviour. The *Act* expressly prohibits members from holding any interest in the petroleum industry (s. 3(5)). Some biographical material concerning members of the Board and its senior staff who held office during the period under review is presented in Chapter VI.

[3] *NEB Act*, s. 83.

[4] This point was confirmed in a more general way in the course of interviews with members of the Board staff: Boyd Gilmour, Chief of Regulatory Division, Economics Branch, June 27, 1972 (attended by M. Schwartz, Chief of Markets Research and Forecasts Division); and Ted Hage, Senior Engineer, Regulatory Division, June 28, 1972.

[5] [illegible]tional Energy Board, *Report to the Governor-in-Council*. In the matter of the applications under the National Energy Board Act of Alberta and Southern Gas Company, Alberta Natural Gas Company, Canadian Montana Pipe Line Company, Trans-Canada Pipe Line Limited, July 1965, p. 4.39 (hereafter *Reports to the Governor-in-Council* will be cited so as to correspond to the following abbreviation of the above as *R.G.C.*, July, 1965).

[6] The twenty-one-year protection period is related to the time over which natural gas pipe lines tend to be written off, usually about twenty years. The Board's selection of a thirty-year projection of demand reflects the practice of the Alberta Board as well as a precedent set by the Borden Commission.

[7] *R.G.C.*, March, 1960, pp. 4-7. In *R.G.C.*, July, 1965, Appendix 3, a note to Table 4 states, "In the case of the 21 year period for Canadian requirements, the total deliveries . . . were obtained . . . by aggregating the 1965, 1966, and 1967 annual amounts, plus 18 times the 1968 amount."

[8] *R.G.C.*, March, 1960, p. 4.26 (emphasis added; unless noted to the contrary, all emphasis is in original).

[9] NEB, *Annual Report for the Year Ended 31 December, 1969* (Ottawa: Information Canada, 1970), pp. 12-13.

[10] NEB, *Report*, August 1970, p. 4.39. The names of firms which are abbreviated throughout the text are given in full in Appendix D.

[11] Transcript of the Hearing of the National Energy Board commencing November 25, 1969, and ending March 20, 1970, into matters reported in the *Report* of August, 1970 (hereafter referred to as *Board Hearings*), p. 1293.

[12] *Ibid*., p. 1295.

[13] *Ibid*., p. 1297.

[14] NEB, *Report*, August, 1970, p. 4.39. It should be noted that, since 1966, the Canadian requirements protected by available reserves have been estimated on the basis of 25 times the projected fourth year requirement, a change from the 21-year protection described above (Footnote 5). The future surplus calculation by the old method of comparing a 30-year estimate of all Canadian requirements with a 20-year projection of supply was abandoned. The Board's new "Forecast of Future Relationship between Requirements and Supply," merely indicates the rate of growth in reserves additional to the historically ascertained rate of growth which will be necessary to protect Canadian and export requirements. Deficiencies in reserves projected by this method do not constitute grounds for denying exports. For other discussions of the Board's method of surplus determination, see Fisher, op. cit., pp. 584-587; McDougall, op. cit., pp. 74-90. Both these accounts are critical of the Board for allowing future increments in Canadian requirements to depend too heavily upon trend gas.

[15] *Board Hearings*, pp. 5842-5843.

[16] *Ibid*., pp. 5845-5847.

[17] *Ibid*., p. 1859.

[18] *Ibid*., p. 1860. The spokesman went on to say that Arctic and Atlantic sources of natural gas ought to be considered by the Board in the manner recommended as part of the contractable surplus for Canada (p. 1861).

[19] *Ibid*., Exhibit #68 (Gulf); Exhibit #70 (Shell); pp. 5862-5863 (Amoco); p. 5882 (Amerada Hess); and Exhibit #83 (Mobil). Dome urged the Board to include in its calculation of surplus gas reserves wherever they may be found in Canada, but not until it was assured that Canadian crude oil would have full access to the American market, pp. 5898-5906. (Appendix D indicates the nationality of all firms who participated in the *Board Hearings*.)

[20] *Ibid*., p. 5876.

[21] *Ibid*., p. 5890 (B.C. Hydro); p. 5941 (Northern and Central); pp. 5956-5603 (Gaz Metropolitaine); p. 5961 (Consumers' Natural Gas); pp. 5979-5985 (Union).

[22] Ibid., pp. 1556-1559 (Trans-Canada); p. 5760 (Westcoast).

[23] Ibid., p. 6039.

[24] Ibid., pp. 6021 and 6041.

[25] Ibid., p. 5890.

[26] Ibid., p. 5863.

[27] Ibid., p. 5900.

[28] Ibid., pp. 5856, 5858-5859, 5862-5863, 5882-5884, 5898-5900, Exhibits #70 and #83. Gulf expressed its support of the CPA position in Exhibit #68.

[29] Ibid., Exhibit #117.

[30] Ibid., pp. 5638 and 5991-5994.

[31] Ibid., Exhibit #81.

[32] NEB, Report, August, 1970, p. 10.18.

[33] Ibid., p. 10.19.

[34] R.G.C., August 1970, p. 5.31.

[35] NEB, Certain Aspects, op. cit., p. 40.

[36] R.G.C., March 1960, p. 6.9.

[37] Ibid., p. 6.11.

[38] Ibid., p. 6.12 (emphasis added).

[39] R.G.C., July 1965, pp. 8.2-8.4.

[40] Ibid., p. 5.12.

[41] Ibid., p. 5.14.

[42] R.G.C., May 1967, p. 3.11.

[43] R.G.C., August 1970, p. 10.26; cf. p. 5.35.

[44] Ibid., p. 10.24.

[45] Ibid., p. 10.28.

[46] Ibid., p. 10.25.

[47] Ibid., pp. 10.28-10.29.

[48] *Ibid.*, p. 10.30. 4-27

[49] *Ibid.*

[50] *Ibid.*

[51] *Ibid.*, p. 10.31.

[52] NEB, *Certain Aspects*, p. 34.

[53] In the words of the *Report*, "There is an underlying implication, however, that Canada has more or less taken on the responsibility to meet normal growth requirements in these instances," *Certain Aspects*. It is noteworthy that in approving the first export of Niagara, the Board expressly denied that its approval carried any such implication to supply incremental requirements. See below, p. 137. p 4-41

[54] *R.G.C.*, March 1960, pp. 9.5-9.6.

[55] *Ibid.*, June 1960, p. 13.

[56] *Ibid.*, p. 14.

[57] *Ibid.*

[58] *Ibid.*, May 1967, p. 3.11.

[59] *Ibid.*, August 1970, pp. 6.1-6.4.

[60] *Ibid.*, p. 10.35.

[61] *Ibid.*, pp. 10.35-10.36.

[62] The rather painful birth of the Trans-Canada system has already been recounted in brief (see above pp. 67-69). Part of the criticism levelled at the company was the degree of foreign ownership. However, the company would now appear to be majority owned in Canada, with Canadian Pacific Investments and Home Oil Company among the largest shareholders. Canada, Dominion Bureau of Statistics, *Intercorporate Ownership, 1967* (Ottawa: Queen's Printer, 1969). pp 3-2.9

[63] *R.G.C.*, March 1960, p. 5.20.

[64] *Ibid.*, pp. 5.21-5.22.

[65] *Ibid.*, p. 5.22.

[66] *Ibid.*, p. 5.23.

[67] *Ibid.*, pp. 5.26-5.27.

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[68] See below, pp. 135-148.

[69] R.G.C., July 1965, p. 7.8.

[70] *Ibid.*, August 1970, p. 8.26.

[71] *Ibid.*, p. 8.27.

[72] *Ibid.*, p. 8.27.

[73] *Ibid.*, p. 8.28.

[74] *Ibid.*, pp. 8.28-8.29.

[75] *Ibid.*, pp. 8.25-8.26; cf. pp. 8.28-8.29.

[76] McDougall, *op. cit.*, pp. 349-350.

[77] See above, pp. 66-68.

[78] R.G.C., August 1970, pp. 10.56-10.57.

[79] NEB, *Certain Aspects*, pp. 34-36; cf. R.G.C., December 1967, p. 8.3.

[80] R.G.C., March 1960, pp. 8.10-8.13.

[81] *Ibid.*, March 1967, pp. 2.2-2.6.

[82] *Ibid.*, p. 2.7.

[83] *Ibid.*, pp. 3.14-3.15.

[84] *Ibid.*, December 1967, pp. 7.1-7.19.

[85] *Ibid.*, pp. 7.2-7.7.

[86] *Ibid.*, p. 7.7.

[87] *Ibid.*

[88] *Ibid.*, p. 7.8.

[89] *Ibid.*, pp. 7.10-7.13.

[90] *Ibid.*, p. 8.8.

[91] *Ibid.*, p. 8.10.

[92] *Ibid.*, p. 8.11.

[93] *Ibid.*, p. 8.12.

[94] *Ibid.*, p. 8.11.

[95] *Ibid.*, pp. 8.13-8.14.

[96] *Ibid.*, p. 8.15.

[97] *R.G.C.*, February 1968, p. 9.

[98] *Ibid.*, p. 10.

[99] Quoted by the Board in *R.G.C.*, p. 4.

[100] *R.G.C.*, August 1970, pp. 10.58-10.59.

[101] *Ibid.*, pp. 9.39-9.40 and p. 10.60. With respect to the third test, however, the Board did not relate in its Report evidence indicating that "no additional supply from San Juan or other United States sources is presently available," suggesting that gas sold at prevailing prices in the market is undervalued. See *Ibid.*, p. 9.34.

[102] *Ibid.*, p. 10.62.

[103] *Ibid.*, pp. 10.63-10.64.

[104] *NEB Act*, s. 44.

[105] *Ibid.*

[106] *R.G.C.*, March 1960, pp. 10.11-10.12. The earlier decision is reviewed above on pp. 123-124.

[107] *R.G.C.*, May 1960, p. 5.

[108] *Ibid.*, pp. 7-8.

[109] *Ibid.*, p. 12.

[110] *Ibid.*, p. 19.

[111] *Ibid.*, p. 10.

[112] *R.G.C.*, July 1961, p. 16.

[113] *Ibid.*, p. 36.

[114] *Ibid.*, pp. 39-40.

[115] *Ibid.*, pp. 42-43.

[116] *Ibid.*, pp. 43-44.

[117] *Ibid.*, p. 44.

[118] *Ibid.*, p. 46.

[119] *Ibid.*, pp. 48 and 56.

[120] *Ibid.*, p. 56.

[121] *R.G.C.*, August 1966, p. 6.7.

[122] *Ibid.*, p. 6.12.

[123] *Ibid.*, p. 6.12.

[124] Great Lakes marks the only occasion on which a Board decision has been overturned or substantially modified at the level of cabinet. It is also the most disputed decision taken by the Board in the period under review, in terms of the debate which it occasioned in Parliament and the number of interested parties who made submissions to the Board on the question. The issue is discussed more fully in Chapter V.

[125] Strictly speaking, the companies are distinct and made separate applications to the Board, with Consolidated Natural applying to export gas and Consolidated Pipe applying to build the necessary facilities. My use of "Consolidated" is meant to refer to the project as a whole, which seems justifiable on the basis of the inter-corporate ownership involved. Both companies are subsidiaries of Northern Natural Gas, the owner of a very large pipe line system in the United States.

[126] The Consolidated application also provides an interesting instance of the Board's deliberations and decisions with respect to the provisions of s. 44 of the NEB Act. For the interested reader, I provide the following summary of the Board's discussion of these matters in the August 1970 Report, pp. 7.7-7.40 and pp. 10.38-10.40: The Board found, first, that Consolidated had available to it established Canadian reserves of 2.0 Tcf., compared with a total requirement during the term of the licence of 1.53 Tcf. (p. 7.7). The Board was further "satisfied with Consolidated's evidence as to the forecast availability of supply to maintain deliveries at the amended initial level of export proposed by Consolidated" (p. 10.38). This positive finding with respect to what the Board terms "deliverability" was made despite a failure of Consolidated's available supply to meet its full annual requirements after 1988, the eighteenth year of a twenty-five year licence. The total annual deficiency for these years was 240 Bcf. (p. 7.13).

With respect to the proposed pipe line facilities, the Board concluded that a 36-inch diameter line would be more economical than a 30-inch line, "if additional volumes of gas were to become available to Consolidated for export within a reasonable time" and would be adequate to carry the level of exports proposed in the project; that markets existed for as much gas as could be carried by a 36-inch line; and, finally, that considerable economic incentive would exist

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after the installation of such a line for Northern Natural, the parent and receiving company, to fill it to optimum operating level as soon as possible (p. 10.39).

The Board noted in its review of evidence on facilities that more than half the total investment in the combined systems to be constructed had been committed to Canadian supply and contract terms; that over 60 per cent of the pipe in the main line would be supplied from Canadian mills; and that essentially all of the necessary compressor equipment for use both in Canada and in the United States would be purchased from Canadian firms (p. 7.27).

The Board was generally satisfied with the proposed financial arrangements (pp. 7.29-7.33). Among the points raised and discussed in evidence were the proportion of common stock and long-term debt in the financing (approximately 1:5); the expenses included in the cost of service; the composition of the rate base and the rate of annual return (9.75 per cent); and the assumptions for cost purposes concerning the cost of debt money (8.75 per cent) and the return on common equity (14 per cent). With respect to the distribution of common stock, the company submitted that 55 per cent would be offered to residents of Canada through Canadian stock exchanges and the remainder, including any residual of shares made available to the Canadian public but not purchased by them, would be sold to Northern Natural. Of the $50 million in debentures, $15 million would be sold in Canada and about $35 million in the United States. The Board noted one objection to the financial provisions in the application, the absence of a transportation contract between Consolidated and Alberta Gas Trunk, which raised problems for the Board in determining total costs (pp. 10.39-10.40).

[127] Evidence with respect to the three tests and the conclusions based on this evidence are reported in Ibid., pp. 7.37-7.44.

[128] Ibid., pp. 10.41-10.42.

[129] Ibid., p. 10.42.

[130] Ibid., pp. 10.42-10.43.

[131] Ibid., p. 10.43.

[132] Ibid., p. 10.44.

[133] Board Hearings, pp. 5842-5843 and p. 5850. (See Footnote 11 above).

[134] Ibid., p. 5856.

[135] See pp. 5860-5861 (IPAC); pp. 5862-5866 (Amoco); pp. 5868-5871 (Banff Oil); pp. 5875-5877 (Canadian Fina); pp. 5882-5885 (Amerada Hess); pp. 5898-5900 (Dome); and Exhibits #68 (Gulf), #70 (Shell), and #83 (Mobil).

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[136] Board Hearings, p. 5991.

[137] Ibid.

[138] Ibid., p. 5995.

[139] Ibid., p. 6002.

[140] Ibid., pp. 6050-6051.

[141] Ibid., pp. 6561-6562.

[142] Ibid., p. 5981 (Union); p. 5969 (Consumers').

[143] Ibid., pp. 5771-5772 (Trans-Canada); pp. 5832-5833 (Westcoast); p. 5940 (Northern and Central); pp. 6013-6017 (Manitoba); p. 6029 (Ontario); pp. 6042-6043 (Quebec).

[144] Ibid., pp. 5887, 5916-5928 and 5960 respectively.

[145] Ibid., pp. 5769 (Trans-Canada); p. 5964 (Consumers'); pp. 5941-5943 (Northern and Central); pp. 6027-6028 (Ontario); pp. 6041-6042 (Quebec); and p. 6051 (Saskatchewan Power Corporation).

[146] See the table provided in R.G.C., August 1970, p. 10.71.

[147] NEB, Certain Aspects, p. 35.

[148] R.G.C., August 1970, p. 10.15.

[149] NEB, Certain Aspects, p. 32.

CHAPTER V

PARLIAMENT, THE GOVERNMENT AND THE NATIONAL ENERGY BOARD

Given the amount of controversy generated in the mid-1950's by the initiation of two natural gas pipe lines, Westcoast Transmission and Trans-Canada Pipe Lines, and given the amount of attention and discussion devoted in recent years to such prospects as a comprehensive energy agreement with the United States (a "Continental Energy Deal") and a Mackenzie Valley pipe line, it is striking that very few of the NEB decisions reviewed in the preceding chapter sparked anything like a comparable degree of public discussion. Nevertheless, while few of the decisions of the Board became public issues of any magnitude, members of parliament from time to time have made speeches or challenged the government of the day with respect to the Board's conduct of its responsibilities. It would seem worthwhile to inquire whether Parliament has raised or stressed any considerations with respect to natural gas pipe lines and exports which have been overlooked by the NEB and the interest groups represented to it.

The present chapter presents a very broad summary of the parliamentary record from 1969 to 1971 on the issues of natural gas exports and the construction of pipe lines. This review will show that Parliament has almost never criticized the Board's findings with respect to the existence and size of an exportable surplus, has rarely questioned its findings with respect to price, and has only once mounted sustained opposition to an action taken by the Board.

One of the clearest indications of how various members of parliament regarded the National Energy Board and the exercise of its authority is to be found in what they had to say about these matters at the time the NEB was established. It is noteworthy that by that time the Liberals, Conservatives and the CCF all supported the principle of an energy authority with powers sufficient to ensure that Canadian interests were not harmed by an industry in which foreigners played such a large part, although they differed on the nature of the powers required. As early as February, 1955, Progressive Conservative members were suggesting in the House that consideration be given to a national energy board and stating "a great need for an over-all energy policy" in order to get away from "dealing with the problem piecemeal."[1] By 1957, similar sentiments and support for a national energy ~~board~~ were generally voiced by members of parliament, owing in large measure to the fact that it figured in the recommendations of the Royal Commission on Canada's Economic Prospects (the Gordon Commission).[2]

A study prepared for the Gordon Commission had warned of the dangers to Canadian interests represented by the foreign ownership of companies engaged in the transmission and export of natural gas:

> The situation with regard to exports into the State of Montana illustrates perhaps in exaggerated fashion the lack of awareness in this country both of the broader Canadian interest in these matters and the intricacies of parent-subsidiary trade spanning the International Boundary. . . . The Canadian subsidiary of the Montana Power Company has been permitted to charge its parent a price at the International Boundary comparable to that prevailing in other fields in Alberta. Canadian gas, priced in this way, is being delivered

> at the Anaconda Smelter in Butte, Montana, at a cost to that company between one-half and one-third of that which it would otherwise have had to pay for energy in the form of coal or residual oil. Had the forces of supply and demand been allowed free play, the return at the producing level would therefore have been higher.[3]

The same study went on to point out that the American importing companies owned stock in the two other exporting companies in Canada. "These customer companies, because of their corporate ties, have exerted (and may well continue to exert) considerable influence upon the pricing and other policies followed by their subsidiary and other supplier companies in Canada."[4]

The Gordon Commission accordingly recommended a national energy authority with advisory and regulatory powers in its final report, in which it also warned of the extensive foreign ownership and control of the petroleum industry, pointing out that in the board room of international corporations, "the horizons are wider and the pressures different--although not necessarily all less parochial--than they would be in Canada."[5] Nevertheless, the Gordon Commission did foresee a period of time in which Canada's exports of oil and gas would greatly increase.[6]

Diefenbaker, as leader of the official opposition, endorsed the Gordon Commission's recommendation of a national energy board. During a major policy speech on the need for a national development policy, he criticized "not American investment in Canada but the degree to which the investment in Canada by foreign corporations was uncontrolled for the benefit of Canada," and advocated "a plan; not a planned economy but a national policy; not a policy of nationalism but one whereby Canada in the days ahead will remain an independent Canada and will not inexorably drift into economic continentalism."[7] However, when it came time to debate the NEB bill which the Diefenbaker government later brought in, the two major parties appeared to adopt a more cautious approach to the prospective Board and its authority. The Government and the Liberal opposition, while they had differences over some aspects of the bill, showed a common concern that as few obstacles as possible be placed in the way of the industry, whereas the CCF members cautioned that what might be best for the industry, especially if it meant high volumes of exports at less than full value, was not necessarily in the public interest.[8]

A clear example of this is provided by the occasion on which the government sought to amend the original bill by adding the phrase "having regard to the trends in the discovery of gas in Canada" to Clause 83. The Liberals supported this amendment after Pearson had taken pains to establish through questions to the Minister that the amendment was designed to "ensure that there shall not be an unnecessarily restrictive policy applied by the Board" and that foreseeable requirements for use in Canada "should be interpreted in the light of potential production."[9] However, it must be noted that the Liberals did seek, with the support of the CCF, to amend Clause 83 (b) so as to read as did the old Regulation 9, to the effect that export prices must not be lower than the price for similar Canadian sales. The amendment fell, twenty-three to seventy-six.[10]

It would appear, then, that the NEB was established in an atmosphere of concern that Canada obtain the maximum benefit

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from the development of its energy resources and the recognition that this goal was threatened, particularly with respect to natural gas pipe lines and exports, by extensive foreign control of the industry. Evidence of this concern can be found in the work of the Gordon Commission, the Borden Commission, and speeches by members of parliament before and during the debate on the NEB bill. It is interesting in the light of this that, having voted to establish the NEB in 1959, these same members since then have had relatively little to say about the Board's conduct of its responsibilities in connection with pipe line construction and the volume and price of gas exports.

It is true, of course, that the NEB is formally independent of Parliament, reporting directly to the Cabinet. Nevertheless, all applications approved by the Board must also be approved by the Cabinet, and it is at this stage that one might have expected more criticism from the opposition parties, as indeed there was on one occasion to be reviewed shortly. There follows a brief account of what members of parliament have had to say about Board and Cabinet decisions with respect to pipe lines, export prices, and export volumes.

Construction of Pipe Lines

The case of Great Lakes Transmission (Trans-Canada's pipe line through the United States) prompted what was, without doubt, the most prolonged and heated parliamentary debate on a Board decision to take place in its history. In this instance, there is evidence that the Cabinet reversed its original decision to reject the project, which had been approved with reservations by the Board, after extensive meetings with representatives of industry:

> A high level meeting was arranged for September 9 between senior cabinet ministers and one of the most formidable groups of Canadian businessmen ever assembled for such a purpose. In addition to the Trans-Canada board members most involved and knowledgeable in the matter, there were the heads of the Steel Company of Canada, Bell Telephone, the Canadian Imperial Bank of Commerce, two Montreal and Toronto investment houses, and Trans-Canada's four largest customers. President W. O. Twaits of Imperial Oil, representing the Canadian Petroleum Association made a strong statement in favour of the Great Lakes scheme. A few days later during the federal-provincial conference in Ottawa, the prime ministers of Ontario and Quebec, who were concerned over the threat of higher energy costs for central Canada, were persuaded to lend their verbal support to the pressure being mounted by the premiers of Alberta and Saskatchewan for reconsideration of the final decision. A group of Western Conservative M.P.'s secured John Diefenbaker's support for a statement in favour of the Great Lakes proposal and asking the government to change its mind. On September 19, Alvin Hamilton released their statement to the press.[11]

A compromise plan was worked out, according to which the southern line would be allowed but would, according to a letter of agreement between Trans-Canada and the Government of Canada, always carry less than half of the company's total deliveries to its markets in Eastern Canada.[12]

The government stated its rejection of the original proposal on August 25, 1966, and announced its new position of approving a modified proposal on October 4. The debate on the government's new stand began in earnest the day it tabled copies of the formal agreement between the Government of Canada and Trans-Canada Pipe Lines Limited. The debate was originally in the form of comment on the ministerial statement. From October 31 to mid-November, the debate continued on the vehicle of an interim supply bill for the Department of Defence.

Diefenbaker, as Leader of the Opposition, stated as an immediate reaction to the tabled documents:

> We find today that continentalism has become the keystone of this government's policy. Continentalism was preached in the days of Macdonald. He stood against it and assured us that Canada would be an independent nation.[13]

Douglas of the NDP pledged that

> if the government proceeds to put this agreement into effect and to authorize Trans-Canada Pipe Lines to build this line through the United States, I maintain it is doing so in contravention of the Trans-Canada Pipe Lines Act, that it has no power to authorise the construction of this line without submitting the agreement and the letters of intent to parliament for approval, and . . . we shall insist that this matter be submitted to parliament.[14]

Later in the debate, Saltzman of the NDP insisted that "this government does not have a mandate to create a continental economy."[15]

Casting shades of the Pipe Line Debate of a decade earlier, the issue was again whether eastern Canadian markets should be served by means of a pipe line controlled entirely or only partially within Canada. The main arguments in favour of the southern route were lower construction costs and reduced unit costs owing to the possibility of combining exports with Canadian service in the same project.[16] The main arguments against were the loss of exclusive Canadian government control over the flows of gas through the Trans-Canada system and the loss of the potential stimulus of an expanded northern line to the economy of Northern Ontario.[17] Objections were occasionally raised that the export component of the southern route, contrary to its claimed benefits, would give industries in the Great Lakes States an advantage over their Ontario competitors.

Parliament considered several other pipe lines during the period under review, although not in response to decisions by the Board. Rather, since pipe lines under federal jurisdiction are required to incorporate by special acts of parliament, private bills of corporation have beem, in a few instances, the occasion of debate on the merits of individual ventures.[18] Some members of parliament used these debates to lament the fact that the creation of the NEB had obviated Parliament's review of the principles and purposes governing pipe line companies. Conversely, other members speaking in support of particular ventures have been prone to argue that parliament's role is simply one of empowering companies to operate as businesses, and that detailed consideration of their operations was a matter for the Board.[19]

The degree of Canadian ownership and control of the companies in question was the main bone of contention in the most protracted of these debates. The CCF members of the House fought the Aurora Pipe Line at great length, primarily on the grounds that it represented a foreign controlled company (Continental Oil, through Hudson's Bay Oil and Gas) entering into a venture--the export of natural gas liquids to the American Midwest--in direct competition with a Canadian owned company already engaged in this business (Foothills Pipe Line Company). They twice moved procedural motions to defeat the bill, and in each case were overwhelmed by a combined Liberal and Conservative vote.[20]

An amendment to the motion for third reading (Peters) to the effect that "all the directors of the company shall at all times be Canadian citizens ordinarily resident in Canada," carried fifty-five to zero. At this point, the CCF abandoned the field, with Peters claiming that this amendment would largely eliminate "doubts we have as to whether or not these vital natural resources are going to be used to the advantage of the Canadian economy."[21]

Export Prices

Of the two questions the Board must decide in approving gas exports--export price and the size of the exportable surplus--export prices have provided more grist for the parliamentary mill than the determination of surplus. The response of Parliament to the Board's export decisions on either aspect will be summarized briefly here, followed by a somewhat more extended discussion of the few occasions on which the Board has been challenged with respect to these matters by members of parliament.

As for the Board's major export decisions of 1960, 1965, and 1970, the parliamentary record may be briefly summarized as follows: the 1960 decision received little comment, and what it did receive was favourable. McIllraith, of the opposition Liberals, said, "I think this is a very good thing for the country at large as well as for the industry." He noted, in passing, that the approval of the Westcoast export, "vindicated the stand taken by the former government in this regard."[22] Herridge, speaking for the CCF, expressed confidence in the Board and added,

> In view of the representations made by citizens, municipalities, and various organizations in places from which the gas is to be exported, I take it that the interests of potential Canadian consumers with respect to both service and price are well protected by this decision and that there is protection with respect to reserves.[23]

The 1965 decision received no comment whatsoever because the House was not in session at the time the decision was reported. Early in 1966, however, a speech by Jack Davis makes a fairly obvious reference to it.[24] The 1970 decision was the subject of frequent questions and comments during and after the Board's consideration of it. Douglas of the NDP pressed the government on several occasions to give the assurance that the export applications would not be approved until the government had adopted an overall energy policy and until the matter had been brought before parliament. He received the reply from the Minister that the matter could not be discussed by the government or parliament before the Board had reached a decision.[25] After the exports had been approved by both the Board and the government, Douglas moved the adjournment of the House to discuss the decision, and the Speaker ruled that an opportunity to debate the issue would soon be available at the opening of the next session. When this opportunity did present itself a few days later, Stanfield did not even mention the export decision during his address, but Douglas did.[26] Shortly thereafter, the Minister of Energy, Mines and Resources spoke at length in defense of the decision.[27] Thereafter, save for a few incidental comments in the course of other debates, the issue was dropped.

By far the most contentious questions with respect to price have arisen out of the export provisions of Westcoast Transmission's contract with El Paso. Parliament's deliberation on this issue reached a peak during the 1967-68 negotiations to improve the return to Westcoast from its export operation, which had not yet escaped the twenty-two cents per Mcf of the 1954 Agreement. In this episode, Alvin Hamilton was supported by the NDP members in moving that the government take a stand in support of the Board, which was being pressed by the FPC to continue the export of gas to the Northwestern states at prices which the Board had already concluded were incapable of realizing the full market value of the gas.

Hamilton's motion was that the government state immediately its policy on national resources, one particular of which was to be a national energy policy. He was primarily concerned that the government give guidance to the NEB "now engaged with this confrontation with the federal power commission in Washington," and that parliament unite behind the Board and the criteria on prices set out in the NEB Act. Douglas spoke in support of this. Several government members (Basford, Pepin, Olson) rejoined that the Board had been established to handle such matters independently of parliament and that parliament should at least wait to see what the Board's decision turned out to be.[28]

The Minister, too, rejected Hamilton's suggestion by declaring that the matter was still under deliberation by the Board, that any statement by the government or even parliament as a whole would constitute a violation of the Board's independence, and that the time for a parliamentary review of the decision was after the Board had reported on the matter and the government had accepted its decision, when and if it did so.[29] Hamilton's motion failed, and the government's eventual approval of the Board's eventual decision never did come before the House.

Apart from the Westcoast affair, the price provisions of approved exports have not been the subject of motions and divisions before the House. Members have, however, risen from time to time to speak on the subject. In particular, Jack Davis and Alvin Hamilton have pointed out the need for special attention to the question of

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price under conditions where foreign control of the exporter might result in prices less than desirable from the viewpoint of the Canadian public interest. Davis, in a fairly transparent reference to the cost of service basis for the exports of Alberta and Southern and Canadian-Montana, argued strongly for prices just below the least cost alternative in the market served. "We should not be making gas available to areas like San Francisco at bargain basement prices."[30] Hamilton, too, just prior to his barage against the Westcoast situation reviewed above, expressed his more general concern that Canadians should obtain "competitive prices" for fuels sold in the United States. "I have a suspicion that much of our resources which are owned by subsidiaries of United States companies return a very small emolument per unit sold and that the main profit on natural resources in Canada goes to the parent company in the United States which finally uses the product."[31]

Surplus Determination

Members of parliament have been even less concerned with the volumes of gas exports than with their prices. Very rarely, some member has risen to take the NEB to task for its estimates of Canadian gas requirements or supplies. In the course of the Great Lakes Debate, Martin of the NDP quoted an editorial in the Toronto Daily Star which was critical of the government's reversal on the question of the United States line and which challenged what it saw as the government's lack of concern with the potential and desirable size of the market for natural gas in Ontario and Quebec.[32] In the course of the same debate, Hamilton blamed the NEB for failing to warn Canadians and the government of the then approaching shortage of supply to Eastern Canada, which had been discernible for two years.[33]

Douglas criticized the Board for failing to anticipate in its 1970 calculations the rapid growth in the Eastern market which would cause shortages there within a matter of months.[34] Later in the year, when this shortfall in supply was real enough to cause the Board to find no further gas available to meet the export applications submitted to it, the Board's approach to the calculations was again strongly criticized, this time by Wooliams and Ritchie, as being too cautious in estimating Canadian reserves.[35]

It is apparent from the parliamentary record reviewed here that, in keeping with what might be considered a tradition, members of parliament are primarily concerned with pipe lines, and in particular the routing and ownership of pipe lines.[36] They seem to devote less attention to the other questions addressed in this study. With the exception of the export prices charged by Westcoast Transmission, complaints about which might also be considered a parliamentary tradition, the export decisions of the NEB and the policies of governments during the period under review received relatively scant attention.

The conclusion seems warranted that the bulk of the membership in the House of Commons, that is, both the members of the government and of the official opposition, have sustained for over a decade attitudes on the issues of pipe lines and natural gas exports which have been satisfied in a general way by NEB decisions. Certainly, the failure of the official opposition to take the government to task for its approval of Board decisions is consistent, with one exception, and striking. The most recent example is Stanfield's failure to even mention the Board's August 1970 decision--the largest single volumes of gas exports ever approved by Canadian authorities--in his address on the speech from the throne, which he made within days of the decision. Other examples may be found in the combined votes of the government and the official opposition against motions by the CCF in these matters, which go back as far as the bill to establish the NEB.

To observe this situation of near bipartisanship is one thing; to account for it is another. An important factor, presumably, is the fact that the cabinet decisions to approve NEB actions do not come automatically before parliament, and therefore require extra effort to bring before the House for debate. However, both the Great Lakes debate and Alvin Hamilton's motion on Westcoast Transmission show what can be done in spite of this limitation if the determination to do something exists. Another suggestion is that potential opposition to the actions of the NEB has been lulled to indifference by the "symbolic reassurance" provided by the independence and expertise of the Board in exercising its regulatory functions.[37] An example of this would be the CCF's acceptance of the first exports approved by the Board, which was justified on the basis of the independence and technical competence of the Board and the fact that numerous interested parties who had been represented before the Board had not opposed the exports. Finally, it might be supposed that the two major parties have simply been influenced in one way or another by the industry. This could well be true, but it is important to note in this connection that organized and vocal opposition to Board decisions has not been very frequent or powerful outside Parliament, either, until the 1970's.

Whatever may be the strength of these and other possible factors, the truth remains that the Board has run into little trouble from Parliament, either in the form of opposition moves to embarrass the government into rejecting the Board's recommendation or even in the form of casting, during the period under review, the proceedings and decisions of the Board under the light of public scrutiny. This is a point to bear in mind in the course of the evaluation of the Board's performance which begins the next chapter and forms the basis for the conclusions of this study.

NOTES TO CHAPTER V

[1] Canada, Parliament, *Official Report of Debates* (Ottawa: Queen's Printer, 1955), p. 1530. (Hereafter the Reports of Debates will be cited as House of Commons, *Debates*.)

[2] The Liberals apparently went on record in favour of a national energy authority in January 1958. The CCF generally favoured the creation of the Board, but saw several inadequacies in the NEB Bill. The Liberals supported the NEB Bill on Third reading; and the CCF did not vote against it, although they expressed reservations about the capacity of the new Board to protect Canadians with respect to the price of natural gas and oil. See House of Commons, *Debates*, 1959, 5th Session, 24th Parliament, pp. 3997 and 4300-4301.

[3] John Davis, *Canadian Energy Prospects*, A Study Prepared for the Royal Commission on Canada's Economic Prospects (Walter L. Gordon, Chairman) (Ottawa: Queen's Printer, 1957), pp. 166-167.

[4] *Ibid*., pp. 185-186.

[5] Royal Commission on Canada's Economic Prospects, *Final Report* (Ottawa: Queen's Printer, 1957), p. 146.

[6] *Ibid*., pp. 126-127.

[7] House of Commons, *Debates*, 1957, 5th Session, 22nd Parliament, pp. 1155-1160.

[8] *Ibid*., 2nd Session, 24th Parliament, pp. 3771-3774, 3783, 3994-3998, 3980, 3986, 3992 and 4002-4005.

[9] *Ibid*., p. 4218.

[10] *Ibid*., pp. 4219-4223.

[11] William Kilbourn, *Pipe Line: Trans-Canada and the Great Debate, A History of Business and Politics* (Toronto: Clark Irwin and Co., 1970), p. 182. Kilbourn reviews the whole 'Great Lakes Affair' at some length in Chapter 11.

[12] *Ibid*., pp. 182-183. The agreement was tabled in the House on October 31. See House of Commons, *Debates*, 1st Session, 27th Parliament, p. 9223.

[13] House of Commons, *Debates*, October 28, pp. 9224-9225.

[14] *Ibid*., p. 9227.

[15] *Ibid*., p. 9610.

[16] *Ibid.*, for example, Wooliams, October 31, p. 9327; Reed, pp. 9339-9342; Olson, November 16, pp. 9969-9970; Hamilton, p. 9465. Other points in favour of the line were made from time to time: possible benefit to oil exports from gas exports made possible by the southern route; extra markets for natural gas leading to increased exploration and development; the fact that the NEB initially was satisfied with the proposals; and the prospect of earlier completion of the southern route.

[17] See, for example, Douglas, October 28, p. 9228; Cameron, p. 9509; Saltzman, November 7, p. 9613; and Peters, November 16, p. 9964.

[18] See Aurora Pipe Line Company, Bill S-2 (Mr. Wooliams), introduced for second reading on January 17, 1961, and debated until passed by the House, as amended on third reading, July 4; Cochin Pipe Lines Limited, introduced on March 13, 1962; Rainbow Pipe Line Corporation, introduced on June 2, 1967.

[19] See, on this difference of view between the proponents and opponents of the Aurora Pipe Line, House of Commons, *Debates*, 4th Session, 24th Parliament, pp. 1822, 1980, 2686 and 3425-3426. On the same point with respect to the other two lines, see *Ibid.*, 5th Session, 24th Parliament, pp. 1154, 1156 and *Ibid.*, 2nd Session, 27th Parliament, pp. 1316-1317.

[20] See House of Commons, *Debates*, 2nd Session, 24th Parliament, pp. 1129-1130, 1367, 1375 and 1980.

[21] *Ibid.*, p. 7505.

[22] *Ibid.*, 3rd Session, 24th Parliament, April 1, 1960, p. 2853.

[23] *Ibid.*

[24] See Footnote 30 below.

[25] House of Commons, *Debates*, 2nd Session, 28th Parliament, April 7, 1970, pp. 5574-5575; *Ibid.*, June 11, 1970, p. 7996.

[26] *Ibid.*, 3rd Session, October 5, 1970, p. 8755; October 9, 1970, p. 39.

[27] *Ibid.*, October 21, 1970, pp. 433-438.

[28] *Ibid.*, 2nd Session, 27th Parliament, October 28, 1967, pp. 3369-3402.

[29] *Ibid.*

[30] *Ibid.*, 1st Session, p. 5659.

[31] *Ibid.*, 2nd Session, p. 1725.

[32] *Ibid.*, 1st Session, October 31, 1966, p. 9314.

[33] Ibid., November 16, 1966, p. 9467.

[34] Ibid., 3rd Session, 28th Parliament, March 26, 1971, p. 4652.

[35] Ibid., November 23, 1971, p. 9828; December 2, pp. 10112-10113.

[36] For a review of the parliamentary record on the question of pipe lines prior to the period under review, see Thorburn, op. cit., pp. 516-531.

[37] This suggestion has been made by McDougall, op. cit., pp. 327-382.

CHAPTER VI

FOREIGN CONTROLLED CORPORATIONS, THE NATIONAL ENERGY BOARD AND THE NATIONAL INTEREST: ANALYSIS AND CONCLUSIONS

This chapter begins with a review and analysis of the NEB decisions discussed in Chapter IV, and proceeds to assess the impact of foreign controlled corporations on Canadian policy on these matters. It closes with a discussion of the conclusions and possible lines of future inquiry which can be drawn from the study as a whole on the questions of the government control of foreign controlled businesses in Canada and the political consequences of economic integration.

The Performance of the NEB

It appears the NEB was conceived out of a concern that Canada obtain the maximum benefit from the development and marketing of its energy resources and the recognition that this goal should not be allowed to depend upon the unregulated conduct of an industry which, with respect to petroleum, was largely foreign controlled. The question which arises from this is whether regulation of the industry by the NEB has obtained the maximum benefit for Canada from the operations of the natural gas industry. It will be recalled that the Board's primary responsibilities in this area have to do with the volume and price of natural gas exports to the United States and with various features of gas transmission systems.

The record of NEB decisions during the period from 1960 to 1971 shows that the only condition on which the Board has insisted for the export of gas is the existence of an exportable surplus. Moreover, the Board has permitted a gradual expansion of the proportion of total available reserves which may be exported by extending the degree to which future Canadian requirements depend upon trend gas. In its most recent decisions during this period, the Board has insisted only on a price for exports defined by cost of service in two instances and by the relation to Canadian market prices in two other instances. The Board was apparently unconcerned with the overall effect of exports on either the price of gas to Canadian consumers or on Canadian demand, and has never insisted on gas receiving its maximum value in export markets. Under conditions of the availability of an exportable surplus, the Board revealed an inclination to allow considerations such as a more or less broadly defined cooperation with the United States and concern with the growth of the industry to override a concern with obtaining the full value of gas in American markets. Concern with, or confidence in, cooperative relations with the United States has also been a consideration in the Board's decisions with respect to pipe line construction, as both the Matador and Great Lakes decisions showed.

Apart from revealing the basic orientation of the Board to its responsibilities, NEB decisions have, over the decade of the Sixties, contributed significantly to a situation which, in broad terms, was marked by these features, among others:

(1) The current export of large volumes of lower-cost readily accessible gas reserves and a corresponding reliance on higher-cost, relatively inaccessible gas reserves for the protection of future Canadian requirements;

(2) the possibility that a natural gas pipe line from the Arctic will be required to ensure for Canadians incremental supplies of natural gas, predictably at substantially higher prices;

(3) the pricing of exports on the basis of Canadian prices, so that the export price depends, not upon the value of gas in the export market but rather upon prices--well-head prices in two cases, and market prices in two other cases--in Canada; and

(4) a necessary reliance on American goodwill for the dependability of one important pipe line link between Canadian sources of natural gas and the principal Canadian market for natural gas (Great Lakes).

In several respects, these decisions and conditions can be described as significant departures from what has been held to be in the Canadian public interest by the Borden Commission, a number of academic observers, some members of parliament, and a variety of other groups and individuals who have spoken publicly on these issues.[1] Moreover, the Board has, on several occasions, explicitly overridden standards and principles in terms of which it has itself defined the public interest; and it has done this with reference to other principles which it has never formally stated to be of general applicability.

A search through the reports of the NEB for the overriding principles in reference to which it justifies its decisions on gas exports will turn up most frequently the following four:

(a) the principles of "amity and comity", or mutual trust and goodwill, between American and Canadian authorities and interested publics on matters pertaining to the development, production and marketing of natural gas;

(b) the principle that gas exports to the United States can assist Canada in providing service to Canadian markets more cheaply than would otherwise be the case, largely through the medium of economies of scale on pipe line facilities;

(c) the principle that exports of natural gas encourage the development of a resource and of regions of Canada which otherwise could not be economically developed; and

(d) the principle that the fact of past service and the historical terms of service ought to be considered in relation to incremental service to the same market.

It is observable that under conditions of an exportable surplus sufficient to satisfy completely the demand for exports, the Board has rarely denied an application for a pipe line or an export on the basis of its stated criteria with respect to pipe line facilities and its tests with respect to price. Particularly with respect to price, the Board has rather tended to override the constraint imposed by its pricing stipulations by reference to one or more of the principles stated above.

What this seems to indicate is a basic export orientation of the Board, that is, a disposition to export any exportable surplus found to exist, almost regardless of the price to be obtained from an export. Some combination of history, "amity and comity", desire for future market growth, desire for even a minimal return to investors, and spreading of total costs over export as well as Canadian service, was evidently enough to convince the Board to acquiesce in a border price to Westcoast which clearly failed according to its third test in 1967. Some similar combination of factors apparently persuaded the Board, ~~in~~ 1970, to approve further exports by the same company of 3.3 Tcf at a fixed price represented by 105 per cent of the prevailing price in the adjacent Canadian market, which gives no assurance that

Canadians will fully benefit from the rising value of Canadian gas in the American market served.

Similarly, history and good neighbourliness apparently convinced the Board to waive the third test with respect to Alberta and Southern and, despite the reservations about price it did express, grant Alberta and Southern .5 Tcf the Board might otherwise have seen fit to make available to Trans-Canada, in whose prices the Board expressed greater confidence.

For the purposes of this discussion, however, not only the decisions of the Board and the results of these decisions, but also the extent of the authority of the Board to define its own mandate, needs to be emphasized. The fact that, in effect, the Board has been delegated the power to decide national policy with respect to the export of natural gas is evident in the extremely broad and vague delineation of its responsibilities set down in the NEB Act. Once it is understood where Parliament left the stipulation of the standards to be enforced and the goals to be realized by means of the authority it delegated to the Board, it becomes clear that the NEB and the political process which centres on it have determined what these standards and goals are in the reality of experience if not in the language of laws and regulations. The major limitation placed by the Act on the powers of the Board is that the Cabinet rather than the Board holds the final authority to approve applications, although the Board holds the final authority to deny applications. Nevertheless, the power of the Board in practice is revealed in the fact that no Cabinet has ever denied a gas export approved by the Board and, further, in the fact that the operationalization of other statutory limitations placed on the Board are left to its own discretion.[2]

To recall the two conditions which the NEB must satisfy itself have been met before it may approve a licence to export natural gas: first, the quantity of gas to be exported must "not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada"; and second, the price to be charged by the applicant for the gas to be exported by him must be "just and reasonable in relation to the public interest." While the phrases quoted are clearly intended to limit the freedom of the Board to approve gas exports without some regard to volume or price, they convey little more than this; the precise meaning of these provisions can be known only after definitions have been stipulated for such empty phrases as "due allowance," "reasonably foreseeable," "use in Canada," "having regard to trends in discovery in Canada," and "just and reasonable in relation to the public interest." Therefore, to say that the NEB has the power to stipulate the required definitions and the responsibility to devise the methods of applying them is to say that, in effect, it makes national policy with respect to gas exports.

One consequence of the vacuousness of the statutory limitations on the Board's exercise of its responsibility is that it is formally impossible to charge the Board with a failure to satisfy the requirements of the Act. The Board has been delegated the authority to determine through its decisions and actions what Parliament intended to be the limitations on enterprises in the business of exporting natural gas. The Board's own actions define the authoritative standard of the public interest according to which they might be evaluated. Because of this, it is important to examine the circumstances under which it has taken these actions.

As already stated, the only limitations on the export of the gas which the Board has applied without exception are the existence of surplus gas and that the export price meet the cost of bringing the gas to the place of export. This has tended to make the determination of surplus, rather than price or any other considerations, the single most important matter to be decided in relation to gas exports.

Given the prime importance of determining the size of an exportable surplus in deliberations concerning gas export applications, several technical problems and political questions with respect to the estimation of Canadian gas requirements, reserves and discovery rates have assumed almost central significance. These have been compounded to the extent that the political questions have infused the solutions to the technical problems. The political question has been, How much gas should be exported from Canada and under what conditions?; the technical problem has been to know the quantity of gas which is available now and will be available in the future and whether these quantities are adequate to meet the demands to be placed on them. The technical and political questions have been inextricable throughout the history of the Board, largely because it has relied heavily on the same sources of assistance in answering each; that is, the Board has consistently obtained information and understanding useful in resolving the technical problems from parties interested in the political questions.[3]

In determining the size of an exportable surplus--which, to repeat, historically has meant deciding the size of gas exports from Canada to the United States--the Board has been required to stipulate in operational terms the meaning of such factors as the span of time over which Canadian requirements are to be estimated; the method of estimating these requirements; the definition of what constitutes available reserves; whether and to what extent future Canadian requirements are to be protected by established reserves only or by established reserves plus some portion of future reserves; and the method for estimating the future rate of growth of reserves. It has also been required to obtain the data necessary for estimation surplus on the basis of such stipulated definitions and formulae. In doing both, the Board appears to have relied most strongly on the (then) Alberta Oil and Gas Conservation Board, the legacy of the Royal Commission on Energy, and its working relationship with segments of the petroleum industry, principally producer and transmission companies. The Board has termed the contributions of these companies "thoughtful, constructive and cogent" and suggested that their overall effect was more pervasive than it could indicate summarily in its report.[4]

The issue at stake among the interested parties would appear from the hearings and submissions to have been the question of whether the rising demand for gas in the United States markets should be met in spite of an eventual substantial increase in the cost of gas needed to supply Canadian markets or denied in favour of greater Canadian access to lower cost reserves. It should come as no surprise that this was, in fact, the substance of the debate; the point which deserves to be emphasized, however, is that the advocacy of different sides of this political issue appears as evidence on a technical question concerning the most suitable formula for calculating the surplus available for export.

Given that a conflict of interest can arise over the relationship between exports, prices, and the protection of Canadian requirements in the context of the Board's determination of surplus, it is curious that there has been little noticeable conflict among interested parties on the question of export prices. Thus, although intervention in the price provision of export contracts might logically be expected as part of the conflict over the volume of exports--the size of exports has presumably been dependent to some extent upon their price--it must be inferred from the record that the parties represented before the Board have rarely found it in their interest to do so. A question remains, however, whether the public interest must necessarily have been served simply by virtue of the fact that no interested individual or group submitted objections or expressions of dissatisfaction.

In view of the NEB's responsibility to protect the Canadian public interest, it can be reasonably criticized for giving undue emphasis to the considerations brought to its attention by those with whom it is in the most sustained relationship and by those best able to maintain full and constant representation during its proceedings, namely, the major exporting and transmission companies, the producing companies and their associations, several provincial governments, major distributors and major industrial consumers. The Board is fond of expressing in its annual reports a general sense of gratitude to the petroleum industry, with whom it is in constant contact for the purpose of administering the National Oil Policy and performing other tasks. It also frequently states that it relies on the industry to provide information which is essential to the performance of its function.

Moreover, persons with experience in the petroleum industry occupy several senior staff positions on the Board and two such men sit on the Board itself.[5] Some of this is undoubtedly inevitable and may even be desirable. It can, however, be detrimental if the extensive relations necessary to allow the Board to *effect* its goals and its notion of the public interest provide at the same time some particular interests a privileged opportunity to *define* those goals and the public interest the Board acts to realize.

While they cannot be regarded as conclusive evidence of the undue influence of the industry, certain proclivities of the Board have appeared in the course of its deliberations and decisions: the Board's acceptance, apparently without critical examination or further argument, of the position taken by producers that gas exports are a determining factor in the rate of exploration and development of reserves; its consistent failure to take into account the probable effect of gas exports on domestic price levels and domestic demand; its failure to apply uniformly and rigourously standards for the acceptability of export prices; its frequent references to the absence of interventions by interested parties as a justification of its approving an application. In sum, these tendencies and others discussed earlier suggest that the NEB, at least on occasion, regards the national interest in national gas exports to be best implemented by measures which achieve the best balance among the parties represented to it. The question then arises as to how representative of the Canadian public is the configuration of interests who participate with regularity in the deliberations of the Board, especially in view of the number of these controlled by foreign companies. In any case, it is an important question whether it is ever good to accept as the national interest some resultant of converging or conflicting forces represented by particular interest groups with the capacity to make their case effectively.

If the NEB is to be held accountable for certain failures with respect to natural gas exports, it is worth asking in the light of this discussion whether the problem has been the course it has set or the fact that it sets its own course. For more than a decade, with a few sporadic exceptions, neither Parliament, nor successive governments nor the Canadian people have been seriously engaged in consideration of the national interest with respect to energy. Given this, one can only conclude that the NEB has acted in the best light it could have. Those who feel that it has failed Canadians in this have still to ask themselves whether the appropriate response is an appeal to the NEB to reform itself, or is not rather an appeal to Canadians generally to adopt and pass on to the Board through their political representatives a national policy on energy and a statement of the ends which that policy is designed to promote, a task which no Canadian government or public agency has yet performed with any precision.

The National Control of Multinational Corporations

This study has examined the experience of the NEB as an agency with the responsibility to regulate in the Canadian public interest certain aspects of an industry containing a very high proportion of foreign controlled corporations. The results of this investigation would seem to indicate that the problem of ensuring that foreign controlled corporations operate to this country's benefit or of improving the net benefit to the country of their operations is not simply a matter of the government adopting the 'right policy'; the policy must be framed and implemented in the 'right way'. That is to say, little would appear to be gained from policies which are aimed to achieve greater benefits or lesser costs to Canada from the performance of foreign controlled corporations, if these policies are allowed to depend for their success upon administration or regulation by agencies dealing exclusively or predominantly with the very firms whose conduct they are intended to rectify.

Laws which do little more than charge some agency to regulate or oversee a particular class of firms or a particular industry 'in the public interest' or with reference to some equally vacuous guide line, would seem to provide little answer to the problems associated with foreign control of such firms or industries. It is necessary to recognize the fact that, as shown in the present study, foreign controlled corporations are not merely the passive subjects of the authorities, but are rather highly active agents in the formulation and implementation of laws and regulations affecting their interests. Thus, it would appear from the experience of the NEB that the high

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degree of discretion allowed the Canadian authorities in exercising their responsibilities, has resulted in a rather inadequate degree of protection of Canadian interests with respect to the prices obtained for gas exports and the protection of Canadian requirements.

This point concerning the importance of the involvement of foreign controlled firms in the exercise of authority would seem less deserving of emphasis if it were less frequently overlooked in academic studies which involve the issue. To take a very recent example, at least one commentary on the prospect of the Mackenzie Valley natural gas pipe line has suggested that the nationality of the ownership of the line is insignificant, because such lines are subject to Canadian regulation.[6] One who has observed the results of the regulation of Alberta and Southern is likely to look for more substantial protection for Canadian interests.

It would be possible to talk with greater confidence about the potential significance of the political activity of foreign controlled corporations if there were a larger amount and a greater variety of knowledge of their relations with government. Obviously, useful companions to the present study would be ones examining the relations between the oil and gas industries and other government agencies, such as the Departments of Energy, Mines and Resources; Indian Affairs and Northern Development; Environment; Industry, Trade and Commerce; and National Revenue. Others would be studies of their involvement at different levels of policy-making (administration, senior departmental, ministerial, political parties) and on different issues, such as taxation, environmental protection and land use.

Still others might examine the political activities of other industries in which foreign controlled corporations are an important component, such as mining, pulp and paper and manufacturing. Ideally, such studies would inquire whether the large presence of foreign controlled forms in an industry results in any peculiarities in either the relations between the industry and the government or the nature of government policies. Unfortunately, how these studies might be constructed cannot be realistically elaborated at present. (Canadian social science, it should be pointed out, has awaited for thirty-five years the appearance of the second book-length study of a Canadian trade association.) However, some possible lines of inquiry should emerge from the conclusion to this study.

Conclusion

With respect to the theories of international political integration discussed in Chapter I, the results of this study would seem to support the view that the concept of transnational politics and the penetration of national governments by international actors is a useful approach to the politics of international economic integration. The relationship examined here between foreign controlled firms in the natural gas industry and the NEB would appear to be a clear case of transnational politics, as Karl Kaiser has defined that term. As such, the findings reported here tend to reinforce the impression created by some very recent studies of international political integration that such integration may be taking place and may usefully be studied even where there has been no (or very little) development of multilateral institutions, and where there has been no explicit acceptance, perhaps even formal repudiation, of the idea of integration, political union or international cooperation; for the signs of political integration may be evident in the domestic policies of the penetrated state.

One tentative conclusion from the findings reported here--that the high level of integration of the Canadian natural gas industry has, through relations between the industry and the Canadian authorities, produced Canadian policies which are based on a continental rather than a strictly Canadian rationale--would be consistent with these theoretical frameworks and would call for a new 'model' of international political integration. This 'model', or image, would stand between the federalist view of integration as the union of states into a new super-state and the functionalist view of integration as the displacement of national authority by multinational functional cooperation and task performance. It would represent a situation in which individual states, operating in the traditional fashion to some extent and on some issues, adopt on certain issues or with respect to particular sectors of their societies international rather than parochial standards of performance in their domestic policies. This possibility is compatible with, and may be the corollary of, a suggested dimension of international political integration, namely, the substitution of system-wide as opposed to particularist standards of decision-making and performance;[7] it is simply to apply this standard to the domestic as well as foreign policies of the individual states. That is to say, evidence of international political integration may be seen in a decline in the degree to which national policies discriminate in favour of the citizens of the country under consideration.

It can be clearly established that some, although not all, of the practices and decisions of the NEB reviewed in this study fail to discriminate in favour of Canadians, and instead give special consideration to either American consumers or distributors of natural gas. This situation is realized in the Board's consistent failure to allow exports at prices which fail, by the Board's own admission in some cases, to realize their full value. Such prices represent the subsidization of either consumers or distributoes of gas in the United States at the expense of the Canadians whose income would have been improved by the higher prices or, assuming export sales could not have been made at higher prices, at the expense of the Canadians who eventually would have consumed the unexported gas.

Another practice of the Board which it has admitted gives preferred protection to American over Canadian consumers of natural gas is that of providing protection for peak demand in the terminal year of export contracts out of established reserves while providing the same for Canadian buyers only out of trend gas, which is not necessarily any protection at all. It will also be remembered that the Board has admitted that, in general, many of its past decisions have committed an undue portion of established reserves to export markets, leaving Canadian consumers to rely on future and, probably more costly, reserves.

However, while this equal or favoured treatment of Americans by the NEB can readily be established, it is much more difficult to attribute it directly to the involvement of foreign controlled corporations in its proceedings. The limitations of the present study permit no conclusions on the question of whether the involvement of foreign controlled corporations 'leads to' (that is, is consistently associated with) a peculiar kind of decision on the part of the Canadian authorities involved, owing to the fact that this study does not permit any observation of variation in the two key variables (the degree of involvement and the degree of discrimination). All that it can conclude is that, in this case, the two are associated to an observable degree, and that on occasion the Board itself has recognized the contribution of foreign controlled firms to its decisions.

It is possible, though, to raise on the basis of this study a few other considerations which bear on the question of the impact of foreign controlled corporations on Canadian policy in this area. The most important of these is that there is not much evidence to support the view that Canadian policies would have been much different without the presence of foreign controlled corporations in the industry, especially on the question of price. In the first place, there do not appear to have been any significant differences between the policies advocated by foreign controlled producers and distributors and those advocated by Canadian controlled producers and distributors. In the second place, there have been few objections raised to the practices and decisions of the Board in other sectors of Canadian society.

This study has shown, for example, that members of parliament and, more importantly, the party in opposition, have rarely mounted a concerted attack on the Government for accepting a Board decision. Few interest groups or individuals from outside the industry have intervened in Board proceedings or made submissions to it. (The main exception to each of these generalizations was Great Lakes.) Finally, it would appear from the experience of the Hon. Eric Kierans in the Liberal Government of 1970 that this party, which receives the support of the largest single group of Canadian voters, was generally uninterested in changing the direction taken by the Board, even in recognizing that natural gas was being sold to the United States for considerably less than it was worth.[8]

While they are inconclusive, these indications add up to the impression that very few Canadians have been moved during the period under review to undertake or to organize strong and persistent opposition to Board decisions and government policy with respect to natural gas. On the assumption that strongly felt opposition to government policies among a majority of Canadians would tend to produce actions of this kind, it would appear that Canadians by and large have been content with what their authorities have done. Thus, while foreign controlled corporations observably have had some discernible impact on Canadian policies with respect to natural gas, there would appear to be no evidence to support the view that this amounts to the frustration of Canadian authorities with a clear and strong public mandate to alter the behaviour of the industry or some of the firms within it. Rather, it is more accurately described as the achievement of some favourable decisions by Canadian authorities through participation in a mode of business-government relations which appears to be widespread in Canada and which, it seems, is generally deemed to be legitimate.

To return, in conclusion, to Stephen Hymer's words quoted at the start of Chapter II: international business enterprises of widely varying kinds have achieved and continue to promote the international integration of many industries in Canada. Whether Canadians ever adopt Hymer's suggested alternative--integrating these industries across Canada--is unforeseeable; but, if they do, this study suggests that such action would entail forms and a degree of government intervention in the economy which Canadians have hitherto neither seen nor, as a whole, deemed legitimate. If a majority of Canadians were ever to actively support such intervention and fail to achieve it, either because successive governments protected the interests of international business despite the public pressure to do otherwise, or because international businesses proved too powerful to be controlled even by a determined government, then the proposition that foreign controlled corporations have power not only 'within the government', as suggested by this study, but 'over the government', would have undergone a true test, perhaps its only possible true test. Until such a test takes place, if it ever does, it would seem more accurate to regard international business enterprises which operate subsidiaries in Canada as the beneficiaries, rather than as the creators, of the mode of business-government relations which prevails in Canada generally--a pattern of vertical interaction which ensures that Canadian public policies shall rarely intersect the horizontal lines of communication and exchange which these enterprises have created across North America and the world.

NOTES TO CHAPTER VI

[1] See McDougall, op. cit., pp. 327-382; Fisher, op. cit., pp. 553-599; R. E. Hamilton, "A Marketing Board for the Export of Natural Gas?," Canadian Public Administration, XVI, 1 (Spring, 1973), pp. 83-95; Eric Kierans, "The Day the Cabinet was Misled," The Canadian Forum, LII (March, 1974), pp. 4-8.

[2] It is significant in the light of this that the Cabinet cannot overrule the NEB with respect to its finding that an exportable surplus exists. That is to say, the Board has final authority with respect to questions of fact. The Cabinet, if it were to refuse an application for exports under conditions of an exportable surplus being available, would therefore have to do so on some other grounds. I owe this point to an interview with D. M. Fraser, Vice-Chairman of the National Energy Board, June 21, 1972, Ottawa.

[3] The importance of this point is amplified by the fact that the Board's procedures leave a great deal to be desired in comparison with techniques employed by most economists. See P. G. Bradley, "Canadian Energy Policy: Some Economic Questions," B.C. Studies, 13 (Spring, 1972), pp. 110-120. After quoting Section 83 of the Act, Bradley states: "Such guidelines could only have been translated by the Board into a workable economic policy by a combination of imaginative analysis and good luck." He goes on to add, "examination of the National Energy Board's decisions on gas export permits suggests that the surplus criterion has not been developed and applied in the context of a comprehensive economic analysis of supply and demand for natural gas." The major failings pointed to by Bradley are the failure to take the effects of exports on price and, in turn, on Canadian supply and demand and the failure to distinguish associated and non-associated gas in making projections (pp. 118-119). Boyd Gilmour has admitted that there is no firm empirical basis for the growth of reserves in Canada, especially in isolation from other influences such as taxation. Also, see Adelman, who argues that it is "useless and pernicious to think in terms of a single figure to represent for the future 'the demand' or 'the supply' of gas reserves," and argues that what is necessary is a schedule of demand and supply at varying costs and prices. M. A. Adelman, The Supply and Price of Natural Gas (Oxford: Basil and Blackwell, 1962), p. 75. There is no evidence in any Board report that the NEB uses such a method. There is, however, evidence which suggests the Board arrives at its figures for Canadian reserves on the basis of an average of all the estimates submitted to it by interested parties. Eric Kierans shows that, in arriving at the August 1970 decision, the Board's figure for established reserves was exactly the same as the average of the six estimates placed before the Board during the hearings, op. cit., p. 6.

[4] R.G.C., August 1970, pp. ii-iii.

[5] As of 1968, none of the members of the five-man Board of that time held directorships in any company. The same was true of seven of their senior staff. Only one of the Board members, out of four listed in Canadian Who's Who, 1967-1969, had any former association with the industry (three years with Trans-Canada Pipe Lines). The others had careers as public servants before joining the Board. Two men appointed to Board or senior staff positions in 1970 had associations with Chemcell Ltd. in one case and with Standard Oil of Indianna (Amoco) in the other. See NEB, Press Release, December 21, 1970. The author requested and was refused access to information concerning the previous employment of division chiefs and other senior staff.

[6] Leonard Waverman, "Energy in Canada: A Question of Rents," in Issues in Canadian Economics, eds. L. H. Officer and L. B. Smith (Toronto: McGraw-Hill, 1974), p. 147: "To own such a project which the government already controls in every respect is redundant." Moreover, as described in Chapter II, a similar confidence in the capacity of the government to reduce the costs of foreign control through regulation and supervision of the firms and industries pervades the Gray Report, with practically no attention paid to the prospect of the firms acting within the decision-making process to emasculate the controls seemed undesirable by the firms.

[7] "The move toward integration implies increasing the weight of system-wide rather than particularistic standards in creating organizational structures . . . ." Pentland, op. cit., p. 52.

[8] Interview with Eric Kierans, Montreal, July 12, 1972. The action of his cabinet colleagues on this issue was evidently a major factor in Kieran's decision to resign. One of the arguments against Kieran's position, apparently, was that, even though the gas was unquestionably underpriced, this ought to be considered as one contribution to the well-being of the United States, "who are, after all, the defenders of the free world." Lester Pearson has said as much in the House of Commons: "If defense is to be considered on a continental basis, then resources and material for continental defense must be considered on a continental basis," House of Commons, Debates, 1st Session, 22nd Parliament, 1958, p. 2373.

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Gilmour, Boyd, Chief of Regulatory Division, Economics Branch, The National Energy Board, June 27, 1972.

Hage, Ted, Senior Engineer, Regulatory Division, The National Energy Board, June 28, 1972.

Kierans, Eric, Professor of Economics, McGill University, July 12, 1972.

McWhinney, Ed, Executive Assistant to the Minister of Energy, Mines and Resources, July 11, 1972.

Stead, R. A., Secretary, The National Energy Board, June 27, 1972.

APPENDIX A

FOREIGN CONTROLLED CORPORATIONS IN CANADIAN TRADE ASSOCIATIONS

In order to obtain an impression of the importance of foreign controlled firms and their executives in selected Canadian trade associations, the author undertook an investigation of the leadership of such associations. Of the associations examined, three (the Mining Association of Canada, the Canadian Pulp and Paper Association and the Canadian Petroleum Association) will be discussed here individually. Following these reports on individual associations, aggregate information on these three associations and two others (the Independent Petroleum Association of Canada and the Canadian Gas Association) will be presented.

The Mining Association of Canada (MAC)[1]

There were 105 member companies of the MAC in 1969. Of these, the nationality of ownership and control could be established for ninety-two, using conventional sources. Of the ninety-two member firms for whom nationality of control was established, fifty-nine were Canadian controlled, twenty-seven were American controlled and six were other foreign controlled.[2]

There were thirty-five men on the Board of Directors for MAC in 1969, including its officers and executive committee. The primary corporate affiliation of twenty-seven of these men was established. Of these twenty-seven, fifteen were primarily identified with Canadian controlled firms, six with American controlled firms and six with other foreign controlled firms. Ten out of the fifteen Board members whose primary corporate affiliation was with Canadian controlled firms

APPENDIX A (Cont'd)

were nevertheless associated in some manner with one or more foreign controlled firms, foreign firms, or Canadian firms owned jointly by Canadian and foreign firms.

On the basis of these figures, which admittedly are incomplete, it seems reasonable to state that the participation of foreign controlled firms in the membership and leadership of MAC is substantial, but does not constitute a numerically dominant share.

The Canadian Pulp and Paper Association (CPPA)[3]

The Executive Board of the CPPA consisted of thirty-five members in 1969. Of these, thirteen were identified as representatives of Canadian controlled firms, seventeen as representatives of American controlled firms, four as representatives of other foreign controlled firms, and one as a representative of a firm whose nationality of ownership was not established. Thus, American controlled firms provide almost half the membership on the senior committee of the CPPA, and a majority of its membership is representative of foreign controlled firms.

Of the thirteen Board members representing Canadian controlled firms, seven had no traceable affiliations with anything but Canadian firms, while six others were each affiliated with at least one foreign controlled, foreign, or joint Canadian-foreign controlled firm.

The Canadian Petroleum Association (CPA)[4]

The Board of Governors of the CPA consisted of eighteen members in 1969. Of these, five represented Canadian firms, eleven represented firms controlled by American companies, two represented firms controlled

APPENDIX A (Cont'd)

by companies in other foreign countries, and one represented a company whose national ownership was not established. Thus, American controlled firms constitute almost two-thirds of the membership of the senior committee of the CPA, and foreign controlled firms do constitute two-thirds of its membership.

Of the five members representing Canadian controlled firms, three had no traceable affiliations with anything but Canadian controlled firms, one was simultaneously a director of an American controlled firm and the other was simultaneously a director of an American firm.

Aggregate Data

In order to arrive at some general impression of the extent of representation of foreign controlled firms on the executive committees of Canadian trade associations, at least for the industries already examined, the corporate affiliations of the officers of five trade associations were examined--the three associations already discussed plus the Canadian Gas Association and the Independent Petroleum Association of Canada.[5] This examination resulted in a list of 135 instances of such representation and a list of eighty-three enterprises with one or more officers serving, in 1969, on the executive committee of one or more trade associations.[6]

Of the 135 instances of representation which could be traced to firms of known nationality, sixty-seven (50 per cent) were representations of Canadian controlled enterprises, forty-five (33 per cent) were representations of American controlled enterprises, and twenty-three (17 per cent) were representations of other foreign controlled enterprises.

APPENDIX A (Cont'd)

Of the eighty-three enterprises with at least one company officer on the executive committee of at least one trade association, forty-four (54 percent) were Canadian controlled, twenty-seven (32 per cent) were American controlled, and twelve (14 per cent) were other foreign controlled. Twenty-eight enterprises placed more than one representative on one trade association or placed one representative on more than one trade association. Of these twenty-eight, twelve (43 per cent) were Canadian controlled, ten (40 per cent) were American controlled, and six (21 per cent) were other foreign controlled.

In addition to the trade associations specified above, a similar examination was made of corporate representation on a selection of national advisory associations. This investigation was undertaken as a rough check against the possibility that the representation of foreign controlled firms on Canadian trade associations, which could be accounted for strictly on business grounds, might disappear or decline substantially in the case of associations devoted exclusively to business-government relations and deliberations on public policy. The associations examined were the Canadian American Committee and the Canadian Trade Committee of the Private Planning Association, and the Economic Council of Canada.[7] This examination resulted in a list of forty-eight instances of representation of Canadian enterprises and thirty-eight enterprises with one or more representatives on at least one of these organizations.[8]

Of the forty-eight instances of representation which could be traced to firms of known nationality, twenty-nine (61 per cent) were

APPENDIX A (Cont'd)

representations of Canadian controlled enterprises, nine (19 per cent) were representations of American controlled enterprises, and ten (21 per cent) were instances of other foreign controlled enterprises.

Of the thirty-eight enterprises with at least one company officer on at least one of the advisory associations, twenty-five (65 per cent) were Canadian controlled, seven (18 per cent) were American controlled, and six (17 per cent) were other foreign (in fact, British) controlled. Nine enterprises placed more than one representative on one advisory association or placed one representative on more than one association. Of these nine enterprises, four were Canadian controlled, two were American controlled, and three were British controlled.

These data support the contention that foreign controlled corporations are substantially and actively involved in the associations representing industries in which they are involved and are also represented, although to a proportionately lesser extent, on several advisory associations.

NOTES TO APPENDIX A

[1] Data reported here were obtained from the following sources: Mining Association of Canada, Proceedings of the 25th Annual Meeting, February 26, 1969, and Officers and Directors, 1969; D.B.S., Inter-Corporate Ownership, 1967, Queen's Printer, Ottawa, 1969; The Financial Post, Directory of Directors, 1969, Moody's Industrial Manual, 1968.

[2] In most cases, the foreign controlled firms reported on here had more than fifty per cent of their voting shares controlled by a single foreign based corporation, as recorded in Inter-Corporate Ownership. However, I did classify as foreign controlled five firms whose voting stock was held anywhere from twenty-three to forty-nine per cent by a foreign based corporation (or by another Canadian based firm controlled in the same sense by a foreign based corporation) provided the foreign based firm to whom control was attributed held the largest single block of voting shares in the Canadian firm. In one case, a firm was considered foreign controlled on the basis that three different foreign based firms together held a majority of the voting shares in the Canadian firm.

[3] Data reported here were obtained from Pulp and Paper Magazine of Canada, Convention Issue, 1969, and other sources as in Footnote 1. Foreign control was operationalized in the manner described in Footnote 2.

[4] Data reported here were obtained from Canadian Petroleum, May, 1969; Moody's Public Utilities Manual, 1970; Moody's Bank and Finance Manual, 1969; and other sources as reported in Footnote 1. Foreign control was operationalized as described in Footnote 2.

[5] Data reported here were obtained from Canadian Petroleum, August, 1969; and other sources as reported in Footnotes 1 and 4. Foreign control was operationalized in the manner described in Footnote 2.

[6] For the purpose of obtaining these aggregate data, affiliated Canadian firms were grouped, and the totals reported for representation of 'enterprises' are the totals for these groups. Firms were grouped if one firm controlled the other or if both were controlled by the same firm. (Control was operationalized in the manner reported in Footnote 2). Thus, if two firms in the same group were represented by the same executive on the same trade association, this was regarded as simply one instance of representation for the group. However, if an enterprise was represented by the same executive on two or more trade associations, this was regarded as two or more instances of representation.

[7] Data reported here were obtained from Economic Council of Canada, Perspectives 1975, The Sixth Annual Review, Queen's Printer, Ottawa, 1969; various publications of the Private Planning Association for 1969; and other sources as reported in Footnotes 1 and 4. Foreign control was operationalized in the manner described in Footnote 2.

[8] Instances of representation and enterprises were here defined in the same manner as described in Footnote 6.

APPENDIX B

THE ORDER-IN-COUNCIL TO APPOINT THE ROYAL COMMISSION ON ENERGY, P.C. 1957-1386

The Committee of the Privy Council have had before them a report from the Right Honourable John George Diefenbaker, the Prime Minister, representing:

That, inasmuch as Canada has within its boundaries large sources of energy in the form of gas, oil, coal, water and uranium, the increasing need of energy for the growing industrial requirements of Canada renders it of the greatest importance to assure the most effective use of those resources in the public interest;

That it is desirable that an investigation be made now into a number of questions relating to sources of energy in order to assist in determining the principles and procedures to be applied in the administration of certain aspects of energy policy which fall within the jurisdiction of the Parliament of Canada; and

That it is desirable that a suitable form of organization be devised to ensure that present and future Canadian requirements for energy are taken fully and systematically into account in granting licences for the export of energy or sources of energy.

The Committee, therefore, on the recommendation of the Prime Minister advise that:

Henry Borden, Esquire, C.M.G., Q.C., of the City of Toronto,
J. Louis Levesque, Esquire, of the City
George Edwin Britnell, Esquire, of the City of Saskatoon,
Gordon G. Cushing, Esquire, of the City of Ottawa,
Robert D. Howland, Esquire, of the City of Halifax, and
Leon J. Ladner, Esquire, Q.C., of the City of Vancouver

be appointed Commissioners under Part I of the Inquiries Act, to enquire

APPENDIX B (Cont'd)

into and make recommendations concerning:

(a) the policies which will best serve the national interest in relation to the export of energy and sources of energy from Canada;

(b) the problems involved in, and the policies which ought to be applied to, the regulation of the transmission of oil and natural gas between provinces or from Canada to another country, including, but without limiting the generality of the foregoing, the regulation of prices of rates to be charged or paid, the financial structure and control of pipeline corporations in relation to the setting of proper prices or charges, and all such other matters as it is necessary to enquire into and report upon, in order to ensure the efficient and economical operation of pipelines in the national interest;

(c) the extent of authority that might best be conferred on a National Energy Board to administer, subject to the control and authority of parliament, such aspects of energy policy coming within the jurisdiction of Parliament as it may be desirable to entrust to such a Board, together with the character of administration and procedure that might best be established for such a Board;

(d) whether, in view of its special relationship to the Northern Ontario Pipeline Crown Corporation and the nature of its financing and control, any special measures need be taken in relation to Trans-Canada Pipe Lines, Limited in order to safeguard the interest of Canadian producers or consumers of gas; and

(e) such other related matters as the Commissioners consider it necessary to include in reporting upon those specified above.

APPENDIX C

CONTRIBUTORS TO THE ROYAL COMMISSION ON ENERGY

Submissions Received at Public Hearings

Department of Mines and Minerals, Province of Alberta
Mr. Floyd K. Beach
Oil and Gas Conservation Board, Province of Alberta
The City of Calgary
*Canadian Western Natural Gas Company Limited and
*Northwestern Utilities Limited
Canadian Petroleum Association
*Westcoast Transmission Company Limited
*Pacific Northwest Pipeline Corporation and
*El Paso Natural Gas Company
*Jefferson Lake Sulphur Company
*Alberta and Southern Gas Co. Ltd.
Trans-Canada Pipe Lines Limited
The City of Edmonton
The Alberta Gas Trunk Line Company Limited
*The British American Oil Company Limited
Northern Natural Gas Company
Amurex Oil Co., Bailey Selburn Oil & Gas Ltd., Banff Oil Ltd., Canadian Export Gas Ltd., Canadian Husky Oil Ltd., *Canadian Superior Oil of California, Ltd., Dome Exploration (Western) Limited, *Great Plains Development Company of Canada Ltd., Medallion Petroleums Limited
Canadian-Montana Pipe Line Company
The Government of the Province of Saskatchewan
Woodley Canadian Oil Company
The Coal Operators Association of Western Canada and
The Western Coal Utilization Council
*Producers Pipelines Ltd., and
*Westspur Pipe Line Company
Consolidated Mining & Smelting Co. of Canada, Ltd.

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*Denotes foreign or foreign controlled corporation as of 1958.

APPENDIX C (Cont'd)

British Columbia Electric Company Limited
Trans Mountain Oil Pipe Line Company
The City of Prince George and
Prince George Gas Co. Ltd.
Act Oils Limited
Hon. E.C. Manning, Premier, The Government of the Province of Alberta
Canadian Devonian Petroleums Limited, Canadian Homestead Oils Limited, Canpet Exploration Ltd., Colorado Oil & Gas Company, Ltd., Consolidated East Crest Oil Company Limited, Consolidated Mic Mac Oils Ltd., Home Oil Company Limited, Medallion Petroleums Limited, Merrill Petroleums Limited, Okalta Oils Limited, Westburne Oil Company Ltd., Western Decalta Petroleum Limited
*Interprovincial Pipe Line Company
*Shell Oil Company of Canada Limited
*Imperial Oil Limited
*McColl-Frontenac Oil Company Limited
*Triad Oil Co. Ltd.
Canadian Oil Companies, Limited
Mr. W.J. Levy and Mr. M. Lipton
Crow's Nest Pass Towns Committee
The Research Council of Alberta
Royalite Oil Company Limited
West Maygill Gas & Oil Limited
*Texaco Exploration Company
*Mobil Oil of Canada Ltd., and
*Pan American Petroleum Corporation
*The California Standard Company
The Government of the Province of Manitoba
Trans-Prairie Pipelines Ltd.
Saskatchewan Coal Operators
*Hudson Bay Mining and Smelting Co., Limited
*The Great Plains Gas Company Limited
*Stone & Webster Canada Limited
Hon. Leslie M. Frost, Prime Minister, The Government of the Province of Ontario

APPENDIX C (Cont'd)

Ontario Fuel Board

The Consumers' Gas Company

Independent Pipeline Company

Mr. Gilbert Jackson

*Cities Service Oil Company Limited

Mr. Cyril T. Young

*B P Canada Limited

Canadian Bechtel Limited

National Coal Association, Washington, D.C.

Canadian Commercial Coal Dock Operators Association

*Sun Oil Company Limited

Irving Oil Company Limited

Canadian Husky Oil Ltd.

Montreal Pipe Line Company Limited

United Electrical Radio and Machine Workers of America, (U.E.W.)
Canadian Section

Union Gas Company of Canada Limited

Department of Mines, Province of Nova Scotia

Mid-Continent Pipelines Limited

Canadian Devonian Petroleums Limited, Canadian Homestead Oils Limited, Consolidated East Crest Oil Company Limited, Consolidated Mic Mac Oils Ltd., Home Oil Company Limited, Merrill Petroleums Limited, Okalta Oils Limited, Westburne Oil Company Ltd., Western Decalta Petroleum Limited

The Quebec Gasoline Retailers and Garage Operators' Association Inc.

Other Submissions Received

Calgary Power Ltd.

Town of Peace River, Town of High Prairie, Town of McLennan, Town of Falher, Village of Girouxville, Village of Donnelly

Professor Eric J. Hanson

*Northland Utilities Limited

Lloydminster Petroleum Association

Hon. Hugh John Flemming, Premier of New Brunswick

Fisheries Association of B.C.

APPENDIX C (Cont'd)

The Board of Trade of the City of Toronto
Lambton Gas Storage Association
The Canadian Manufacturers' Association
Oil Heating Association
The Canadian Chamber of Commerce
The Government of Saskatchewan
Liquifuels Limited
The Government of British Columbia
Weaver Coal Company
*Quebec Natural Gas Corporation
Trans-Northern Pipe Line Company
*Niagara Mohawk Power Corporation and
*New York State Natural Gas Corporation

*SOURCE: Moody's Industrial Manual, Moody's Transportation Manual and Moody's Public Utilities Manual, Moody's Investment Services, Inc., various years.

APPENDIX D

PARTIES INVOLVED IN THE HEARINGS OF THE NEB, 1970

Name	Abbreviation
*Alberta and Southern Gas Co. Ltd.	"Alberta and Southern"
*Alberta Natural Gas Company	"Alberta Natural"
Alberta Minister of Mines and Minerals	"Alberta"
*Amerada Hess Corporation	"Amerada"
*Amoco Canada Petroleum Company Ltd.	"Amoco"
*Banff Oil Ltd.	"Banff"
British Columbia Attorney-General	"British Columbia"
British Columbia Hydro and Power Authority	"B.C. Hydro"
Canada Southern Petroleum Ltd.	"Canada Southern"
*Canadian Fina Oil Limited	"Canadian Fina"
*Canadian-Montana Pipe Line Company	"Canadian-Montana"
Canadian Petroleum Association	"CPA"
*Consolidated Natural Gas Limited and *Consolidated Pipe Lines Company	"Consolidated"--when referring to total project or "Consolidated Natural" "Consolidated Pipe"
Dome Petroleum Limited	"Dome"
*El Paso Natural Gas Company	"El Paso"
Gaz Metropolitain, Inc.	"Gaz Metropolitain"
Great Lakes Gas Transmission Company	"Great Lakes"
*Gulf Oil Canada Limited	"Gulf"
*High Crest Oils, Inc. et al.	"High Crest"
*Imperial Oil Limited	"Imperial"
Independent Petroleum Association of Canada	"IPAC"
Inland Natural Gas Co. Ltd.	"Inland"
*ICG Transmission Limited	"ICG Transmission"
*Inter-City Gas Limited	"Inter-City"

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[*] Denotes foreign or foreign controlled company as of 1967.

APPENDIX D (Cont'd)

Name	Abbreviation
Manitoba Attorney General	"Manitoba"
*Michigan Wisconsin Pipe Line Company	"Michigan Wisconsin"
*Midwestern Gas Transmission Company	"Midwestern"
*Montana-Dakota Utilities Co.	"Montana-Dakota"
*Natural Gas Pipeline Company of America	"Natural Gas Pipe"
Northern and Central Gas Corporation Limited	"Northern and Central"
*Northern Natural Gas Company	"Northern Natural"
Ontario Minister of Justice and and Attorney General	"Ontario"
*Pacific Gas and Electric Company	"PG&E"
*Pacific Gas Transmission Company	"PGT"
*Pacific Petroleums Ltd.	"Pacific Petroleums"
Quebec Minister of Justice and Attorney General	"Quebec"
Saskatchewan Attorney General	"Saskatchewan"
Saskatchewan Power Corporation	"Saskatchewan Power"
*Shell Canada Limited	"Shell"
The Alberta Gas Trunk Line Company Limited	"Alberta Gas Trunk"
The Consumers' Gas Company	"Consumers'"
The Hydro-Electric Power Commission of Ontario	"Ontario Hydro"
*The Montana Power Company	"Montana Power"
The Oil and Gas Conservation Board of Alberta	"Alberta Board"
*Tennessee Gas Pipeline Company	"Tennessee"
Trans-Canada Pipe Lines Limited	"Trans-Canada"
Union Gas Company of Canada Limited	"Union Gas"
Westcoast Transmission Company Limited	"Westcoast

SOURCE: Dominion Bureau of Statistics, *Inter-corporate Ownership, 1967*, Ottawa: Queen's Printer, 1969. (Statistics Canada. *Inter-corporate Ownership*, 1969, Ottawa: Information Canada, 1971.)